Federal Register

5–24–02 **Friday**
Vol. 67 No. 101 **May 24, 2002**
Pages 36495–36778

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 67 FR 12345.

Printed on recycled paper.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–523–5243**
Assistance with Federal agency subscriptions	**202–523–5243**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Contents

Federal Register

Vol. 67, No. 101

Friday, May 24, 2002

Separate Parts In This Issue

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 67, No. 101
Friday, May 24, 2002

Presidential Documents

Title 3—

The President

Proclamation 7565 of May 21, 2002

National Maritime Day, 2002

By the President of the United States of America

A Proclamation

Our commercial maritime tradition dates back to the founding of our Nation; and it continues to play an important role today, moving passengers and freight, protecting our freedom, and linking our citizens to the world.

Merchant mariners have served America with distinction throughout our history, but especially at critical moments. Before World War II, they made dangerous and difficult voyages carrying vital supplies to Europe. During that war, more than 700 United States merchant ships were lost to attack, and more than 6,000 merchant mariners lost their lives. Merchant mariners played a vital role in the Korean Conflict, especially in the rescue of 14,000 Korean civilians by the SS MEREDITH VICTORY. During the Vietnam War, ships crewed by civilian seamen carried 95 percent of the supplies used by our Armed Forces. Many of these ships sailed into combat zones under fire. In fact, the SS MAYAGUEZ incident involved the capture of mariners from the American merchant ship SS MAYAGUEZ.

More recently, during the Persian Gulf War merchant mariners were vital to the largest sealift operation since D-Day. And after the tragic attacks of September 11th, professional merchant mariners and midshipmen from the United States Merchant Marine Academy transported personnel and equipment and moved food and supplies to lower Manhattan. Their efforts enhanced rescue operations and helped save many lives.

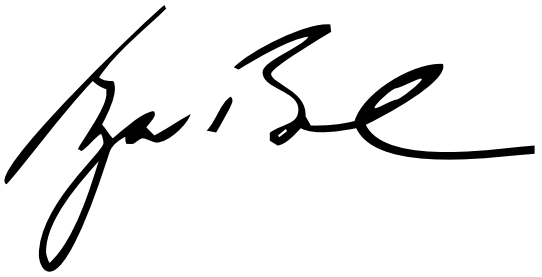
Today, the men and women of the United States Merchant Marine and thousands of other workers in our Nation's maritime industry continue to make immeasurable contributions to our economic strength and our ongoing efforts to build a more peaceful world. We must ensure our maritime system can meet the challenges of the 21st century. As cargo volume is expected to double within the next 20 years, a viable maritime network will help our country compete in our global economy.

Accordingly, my Administration is working with government agencies, the shipping industry, labor, and environmental groups to ensure that our waterways remain a sound transportation option that complements our overland transportation network.

In recognition of the importance of the U.S. Merchant Marine, the Congress, by joint resolution approved on May 20, 1933, as amended, has designated May 22 of each year as ''National Maritime Day,'' and has authorized and requested that the President issue an annual proclamation calling for its appropriate observance.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 22, 2002, as National Maritime Day. I call upon the people of the United States to celebrate this observance and to display the flag of the United States at their homes and in their communities. I also request that all ships sailing under the American flag dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–13267
Filed 5–23–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7566 of May 21, 2002

National Missing Children's Day, 2002

By the President of the United States of America

A Proclamation

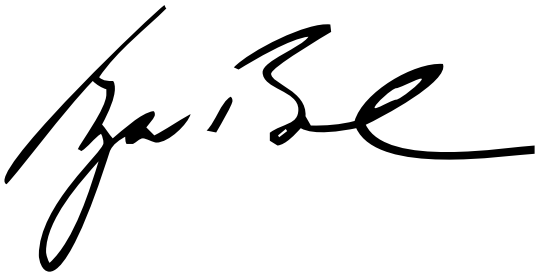
On May 25, 1979, 6-year old Etan Patz disappeared on his way to school in New York City. The ensuing search focused national attention on the tragedy of missing children, as well as the lack of resources and information available to help locate and recover missing children. Since that time, many high-profile cases and the dedicated efforts of parents, the law enforcement community, and others concerned with children's well-being have generated even greater awareness about the need to protect children from criminals and other predators.

During this year, we mark the 20th anniversary of the passage of the Missing Children Act, originally signed into law by President Reagan. Over the past two decades, the Department of Justice, along with many important community and faith-based partners, have made great progress in raising public awareness, improving public safety, locating and recovering missing children, and protecting children from exploitation on the Internet.

Americans must continue to work together to ensure the safety of our children. The Department of Justice will commemorate National Missing Children's Day by presenting six awards that recognize outstanding efforts to safeguard our youngest citizens. The recipients deserve our heartfelt thanks and appreciation for their dedicated work. As they are honored for their contributions, I urge all Americans to take an active role in upholding the safety of our communities and in defending the well-being of our children.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 25, 2002, as National Missing Children's Day. I call upon Americans to join me in commemorating this observance and to remember those young people who are missing. I also call on our citizens to recognize and thank those who work on behalf of missing children and their families. By renewing our commitment to protect our children from harm, we can save lives and prevent untold suffering and grief among the most vulnerable of our society.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–13268
Filed 5–23–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7567 of May 21, 2002

Prayer for Peace, Memorial Day, 2002

By the President of the United States of America

A Proclamation

Every Memorial Day, Americans remember the debt of gratitude we owe to our veterans who gave their lives for our country. On this important day, communities across our Nation stop to remember and to honor the great sacrifices made by our men and women in uniform.

Since its beginnings, our country has faced many threats that have tested its courage. From war-torn battlefields and jungle skirmishes to conflicts at sea and air attacks, generations of brave men and women have fought and died to defeat tyranny and protect our democracy. Their sacrifices have made this Nation strong and our world a better place.

Upwards of 48 million Americans have served the cause of freedom and more than a million have died to preserve our liberty. We also remember the more than 140,000 who were taken prisoner-of-war and the many others who were never accounted for. These memories remind us that the cost of war and the price of peace are great.

The tradition of Memorial Day reinforces our Nation's resolve to never forget those who gave their last full measure for America. As we engage in the war against terrorism, we also pray for peace. When America emerged from the Civil War, President Abraham Lincoln called on all Americans to ''cherish a just and lasting peace.'' In these extraordinary times, our Nation has once again been challenged, and Lincoln's words remain our guiding prayer.

We continue to rely on our brave and steadfast men and women in uniform to defend our freedom. United as a people, we pray for peace throughout the world. We also pray for the safety of our troops. This new generation follows an unbroken line of good, courageous, and unfaltering heroes who have never let our country down.

As we commemorate this noble American holiday, we honor those who fell in defense of freedom. We honor them in our memory through solemn observances, with the love of a grateful Nation.

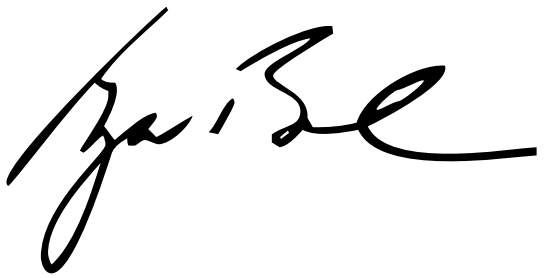
In respect for their devotion to America, the Congress, by a joint resolution approved on May 11, 1950 (64 Stat. 158), has requested the President to issue a proclamation calling on the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer. The Congress, by Public Law 106–579, has also designated the minute beginning at 3:00 p.m. local time on that day as a time for all Americans to observe the National Moment of Remembrance.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby designate Memorial Day, May 27, 2002, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11:00 a.m. of that day as a time to unite in prayer. I also ask all Americans to observe the National Moment of Remembrance beginning at 3:00 p.m. local time on Memorial Day. I

urge the press, radio, television, and all other media to participate in these observances.

I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff until noon on this Memorial Day on all buildings, grounds, and naval vessels throughout the United States and in all areas under its jurisdiction and control. I also request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first day of May, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–13269
Filed 5–23–02; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 67, No. 101
Friday, May 24, 2002

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[Doc. # CN–02–001]

RIN 0581–AC04

Revision of User Fees for 2002 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is raising user fees for cotton producers for 2002 crop cotton classification services under the Cotton Statistics and Estimates Act in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 2001 user fee for this classification service was $1.35 per bale. This final rule would raise the fee for the 2002 crop to $1.45 per bale. The fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration and supervision. Also because of insufficient demand, computer punch cards would be eliminated as an optional method of disseminating classing data to producers.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Norma McDill, Deputy Administrator, Cotton Program, AMS, USDA, Room 2641–S, STOP 0224, 1400 Independence Avenue, SW, Washington, DC 20250–0224. telephone (202) 720–2145, facsimile (202) 690–1718, or e-mail *norma.mcdill@usda.gov.*

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the **Federal Register** on April 19, 2002. (67 FR 19357). A 15-day comment period was provided for interested persons to respond to the proposed rule. No comments were received, and no changes have been made in the provisions of the final rule.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866; and, therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 35,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR § 121.201). The increase above the 2001 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee increase represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (The 2001 user fee for classification services was $1.35 per bale; the fee for the 2002 crop is increased to $1.45 per bale; the 2002 crop is estimated at 16,504,065 bales).

(2) The fee for services will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 2001 crop, 20,100,000 bales were produced; and, virtually all of these bales were voluntarily submitted by growers for the classification service.

(4) Based on the average price paid to growers for cotton from the 2000 crop of 49.8 cents per pound, 500 pound bales of cotton are worth an average of $249 each. The user fee for classification services, $1.45 per bale, is less than one percent of the value of an average bale of cotton.

(5) Due to insufficient demand, computer punch cards would be eliminated as an optional method of disseminating classing data to producers.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this final rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Fees for Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was $1.35 per bale during the 2001 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, and supervision. These changes will be made effective July 1, 2002, as provided by the Cotton Statistics and Estimates Act.

This final rule establishes the user fee charged to producers for HVI classification at $1.45 per bale during the 2002 harvest season.

Public Law 102–237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 2001. Therefore, the 2002

producer's user fee for classification service is based on the 2001 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102–237. The 2001 base fee for HVI classification exclusive of adjustments, as provided by the Act, was $2.22 per bale. An increase of 2.51 percent, or 6 cents per bale increase due to the implicit price deflator of the gross domestic product added to the $2.22 would result in a 2002 base fee of $2.28 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, gross *national* product has been replaced by gross *domestic* product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 2002 crop is estimated at 16,504,065 bales. The 2002 base fee was decreased 15 percent based on the estimated number of bales to be classed (1 percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum adjustment of 15 percent). This percentage factor amounts to a 35 cents per bale reduction and was subtracted from the 2002 base fee of $2.28 per bale, resulting in a fee of $1.93 per bale.

With a fee of $1.93 per bale, the projected operating reserve would be 51.3 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of $1.93 must be reduced by 48 cents per bale, to $1.45 per bale, to provide an ending accumulated operating reserve for the fiscal year of 25 percent of the projected cost of operating the program. This would establish the 2002 season fee at $1.45 per bale.

Accordingly, § 28.909, paragraph (b) would be revised to reflect the increase of the HVI classification fee from $1.35 to $1.45 per bale.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909 (c).

Growers or their designated agents receiving classification data would continue to incur no additional fees if only one method of receiving classification data was requested. The fee for each additional method of receiving classification data in § 28.910 would remain at 5 cents per bale. Computer punched cards would be eliminated as an optional method of disseminating classing data to producers for the 2002 and subsequent crops because there is an insufficient demand for the use of this method. Accordingly, this change would be reflected in § 28.910 (a). The fee in § 28.910 (b) for an owner receiving classification data from the central database would remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910 (c) concerning the fee for new classification memoranda issued from the central database for the business convenience of an owner without reclassification of the cotton will remain the same.

The fee for review classification in § 28.911 would be increased from $1.35 to $1.45 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and record keeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set forth in the preamble, 7 CFR Part 28 is amended as follows:

PART 28—[AMENDED]

1. The authority citation for 7 CFR Part 28, Subpart D, continues to read as follows:

Authority: 7 U.S.C. 471–476.

2. In § 28.909, paragraph (b) is revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.45 per bale.

* * * * *

3. In § 28.910, paragraph (a) (3) is removed:

* * * * *

4. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

§ 28.911 Review classification.

(a) * * * The fee for review classification is $1.45 per bale.

* * * * *

Dated: May 21, 2002.

Kenneth C. Clayton,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–13230 Filed 5–22–02; 2:06 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE184; Special Condition 23–118–SC]

Special Conditions; Avidyne Corporation on the Cirrus Design Corporation Model SR20/SR22; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Avidyne Corporation, 55 Old Bedford Road, Lincoln, Massachusetts, 01773 for a Supplemental Type Certificate for the Cirrus Design Corporation SR20/SR22 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of an electronic flight instrument system (EFIS) display Model 700–00006–XXX–( ) manufactured by Avidyne Corporation for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to this airplane.

DATES: The effective date of these special conditions is May 7, 2002. Comments must be received on or before June 24, 2002.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE184, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE184. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE184.'' The postcard will be date stamped and returned to the commenter.

Background

On April 20, 2001, Avidyne Corporation, 55 Old Bedford Road, Lincoln, Massachusetts, 01773, made an application to the FAA for a new Supplemental Type Certificate for the Cirrus Design Corporation Models SR20/SR22 airplanes. The Cirrus SR20/SR22 are currently approved under TC No. A00009CH. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS, that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Avidyne Corporation must show that the Cirrus SR20/SR22 aircraft meet the following provisions, or the applicable regulations in effect on the date of application for the change to the Cirrus SR20/SR22.

Model SR20: Part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by 23–1 through 23–47, except as follows: 14 CFR part 23, §§ 23.573, 23.575, 23.611, 23.657, 23.673 through Amendment 23–48; 14 CFR §§ 23.783, 23.785, 23.867, 23.1303, 23.1307, 23.1309, 23.1311, 23.1321, 23.1323, 23.1329, 23,1361, 23.1383, 23.1401, 23.1431, 23.1435 through Amendment 23–49; 14 CFR part 23, §§ 23.3, 23.25, 23.143, 23.145, 23.155, 23.1325, 23.1521, 23.1543, 23.1555, 23.1559, 23.1567, 23.1583, 23.1585, 23.1589 through Amendment 23–50; 14 CFR part 23, §§ 23.777, 23.779, 23.901, 23.907, 23.955, 23.959, 23.963, 23.965, 23.973, 23.975, 23.1041, 23.1091, 23.1093, 23.1107, 23.1121, 23.1141, 23.1143, 23.1181, 23.1191, 23.1337 through Amendment 23–51; 14 CFR part 23, § 23.1305 through Amendment 23–52.

Model SR22: Part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by 23–1 through 23–53, except as follows: § 23.301 through Amendment 47; §§ 23.855, 23.1326, 23.1359, not applicable. 14 CFR part 36 dated December 1, 1969, as amended by current amendment as of the date of type certification.

Equivalent Levels of Safety finding (ACE–96–5) made per the provisions of 14 CFR part 23, § 23.221; Refer to FAA ELOS letter dated June 10, 1998 for models SR20, SR22. Equivalent Levels of Safety finding (ACE–00–09) made per the provisions of 14 CFR part 23, §§ 23.1143(g) and 23.1147(b); Refer to FAA ELOS letter dated September 11, 2000, for model SR22. Equivalent Levels of Safety finding (ACE–01–01) made per the provisions of 14 CFR part 23, §§ 23.1143(g) and 23.1147(b); Refer to FAA ELOS letter dated February 14, 2000, for model SR20.

Special Condition (23–ACE–88) for ballistic parachute; Refer to FAA letter November 25, 1997, for models SR20, SR22.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with 14 CFR part 21 § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Carpenter Avionics Inc. plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane.

Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz ...	100	100
200 MHz–400 MHz ...	100	100
400 MHz–700 MHz ...	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values over the complete modulation period.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts rms per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to Cirrus Design Corporation SR20/SR22 airplanes. Should Avidyne Corporation apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR part 21, § 21.16 and § 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Cirrus Design Corporation SR20/SR22 airplanes modified by Avidyne Corporation to add an EFIS.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on May 7, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–13131 Filed 5–23–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE183, Special Condition 23–117–SC]

Special Conditions; S–TEC Corporation Mirage PA–46–350P With Single Sided EFIS Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to S–TEC Corporation, One S–TEC Way, Mineral Wells TX 76067 for a Supplemental Type Certificate for a single sided Electronic Flight Instrument System (EFIS) installed in the Mirage PA–46–350P airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) ''Magic'' display manufactured by Meggitt for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to this airplane.

DATES: The effective date of these special conditions is May 7, 2002. Comments must be received on or before June 24, 2002.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE183, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE183. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4123.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE183.'' The postcard will be date stamped and returned to the commenter.

Background

On March 12, 2001, S–TEC Corporation, One S–TEC Way, Mineral Wells, TX 76067 made an application for a supplementary Type Certificate for a single sided EFIS installed in the Piper Mirage PA–46–350P airplane. The Piper Mirage PA–46–350P airplane is currently approved under TC No. A25SO. The modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS, that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, S–TEC Corporation, One S–TEC Way, Mineral Wells, TX 76067 must show that the single-sided EFIS installed in the Piper Mirage PA46–350P airplane meets the following provisions, or the applicable regulations in effect on the date of application for the change to the Mirage PA–46–350P.

14 CFR part 23, effective February 1, 1965, as amended by Amendment 23–25, effective March 6, 1980: FAR 25.783(e) as amended by Amendment 25–54, effective October 14, 1980; 14 CFR part 25, § 25.831(c) and (d) as amended by Amendment 25–41, effective September 1, 1977, and 14 CFR part 36, Appendix F through Amendment 36–15, effective May 6, 1988, when equipped with a 2-bladed propeller or 14 CFR part 36, Appendix G through Amendment 36–16, effective December 18, 1988, when equipped with optional 3-blade propeller; Special Conditions No. 23–ACE–53, Docket No. 082CE; 14 CFR part 23, §§ 23.1309 and 23.1311 as amended by Amendment 49; and the special conditions adopted by this rule making action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

S–TEC plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced

components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz ...	100	100
200 MHz–400 MHz ...	100	100
400 MHz–700 MHz ...	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to Piper Mirage PA–46–350P. Should S–TEC apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Piper Mirage PA–46–350P airplane modified by S–TEC Corporation to add an EFIS.

1. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF). Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities

of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on May 7, 2002.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–13133 Filed 5–23–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM221, Special Conditions No. 25–203–SC]

Special Conditions: Israel Aircraft Industries (IAI) Model 1124 Airplane; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued Israel Aircraft Industries (IAI) Model 1124 airplanes modified by Duncan Aviation, Inc. These modified airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of an air data display unit that displays critical flight parameters to the flightcrew. The applicable airworthiness standards do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields. The special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 16, 2002. Comments must be received on or before June 24, 2002.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM221, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM221. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected airplanes. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On April 12, 2002, Duncan Aviation, Inc., 15745 South Airport Road, Battle Creek, MI, 49015, applied for a supplemental type certificate (STC) to modify the Israel Aircraft Industries (IAI) Model 1124 airplane listed on Type Certificate No. A2SW. The Model 1124 is a twin engine, small transport airplane. It is capable of carrying two flightcrew members and up to ten passengers. The modification incorporates the installation of an air data display system. The air data display system displays critical flight parameters to the flightcrew. These systems can be susceptible to disruption to command and/or response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and announcement functions or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Duncan Aviation must show that the Israel Aircraft Industries Model 1124 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A2SW, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The certification basis for the modified Israel Aircraft Industries Model 1124 airplane includes Civil Aviation Regulations (CAR) 4b, effective 31 December 1953, including amendments through 4b–11, 4b–12, paragraphs 4b.132(e), 4b.151(a), 4b.155, 4b.156, 4b.157, 4b.158, 4b.160, 4b.162, 4b.191, 4b.210(b)(5), 4b.603(k), 4b.711, and paragraphs pertaining to engine fire shielding 14 CFR part 25, dated February 1, 1965, including Amendments 25–1 through 25–20, as listed in the Type Certificate Data Sheet (TCDS) No. A2SW.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Israel Aircraft Industries Model 1124 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 1124 airplane

must comply with the part 25 fuel vent and exhaust emission requirements of 14 CFR part 34 and the part 25 noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Duncan Aviation, Inc. apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Israel Aircraft Industries Model 1124 airplane will incorporate an air data display unit that displays critical flight parameters to the flightcrew. These systems can be susceptible to disruption to command and/or response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and announcement functions or present misleading information to the pilot. The current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards that address protecting this equipment from the adverse effects of HIRF. Accordingly, these instruments are considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionic/electronic and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Israel Aircraft Industries Model 1124, as modified by Duncan Aviation, Inc. These special conditions require that new avionic/electronic and electrical systems such as the air data display unit, which perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 OR paragraph 2, below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table below are to be demonstrated.

TABLE 1

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz ...	100	100
200 MHz–400 MHz ...	100	100
400MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Israel Aircraft Industries Model 1124 airplane modified by Duncan Aviation, Inc. to include the air data display unit. Should Duncan apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Israel Aircraft Industries Model 1124 airplanes modified by Duncan Aviation, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Israel Aircraft Industries Model 1124 airplanes modified by Duncan Aviation, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on May 16, 2002.

Linda Navarro,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–13132 Filed 5–23–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–32–AD; Amendment 39–12759; AD 2002–10–13]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 58P, 60, A60, B60, and 65–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Model 58P, 60, A60, B60, and 65–88 airplanes. This AD requires you to install new exterior operating instruction placards for the exit doors. This AD is the result of Raytheon improving the visibility and understandability of the door operating instruction placards. This was done as a result of difficulty opening the emergency exits of a similar type design airplane. The actions specified by this AD are intended to assure that clear and complete operating instructions are visible for opening the emergency exit doors. If not visible and understandable, this could result in the inability to open the exit door during an emergency situation.

DATES: This AD becomes effective on July 8, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of July 8, 2002.

ADDRESSES: You may get the service information referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001-CE–32–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steven E. Potter, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA believes that the instructions for opening the exit doors are either not visible or not easy to understand on Raytheon Model 58P, 60, A60, B60, and 65–88 airplanes. This is based on an accident involving a similar type design airplane that resulted in the issuance of AD 97–04–02. AD 97–04–02 was later superseded by AD 98–21–20 to incorporate more visible and understandable instructions.

What Is the Potential Impact if FAA Took No Action?

If the exterior door operating instruction placards are not visible and understandable, this could result in the inability to open the exit doors during an emergency situation.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Model 58P, 60, A60, B60, and 65–88 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 14, 2002 (67 FR 1670). The NPRM proposed to require you to install new exterior operating instruction placards for the exit doors.

Was the Public Invited to Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 850 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 workhours × $60 per hour = $120.	$40	$120 + $40 = $160	$160 × 850 = $136,000.

The manufacturer will provide warranty credit for parts to the extent noted under *Material Information* in Raytheon Mandatory Service Bulletin SB 11–3404, Issued: June, 2001.

Compliance Time of This AD

What Will Be the Compliance Time of This AD?

The compliance time of this AD is ''within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 12 calendar months after the effective date of this AD, whichever occurs first, unless already accomplished.''

Why Is the Compliance Time of This AD Presented in Both Hours TIS and Calendar Time?

The unsafe condition on these airplanes is not a result of the number of times the airplane is operated. Airplane operation varies among operators. For example, one operator may operate the airplane 50 hours TIS in 3 months while it may take another operator 12 months or more to accumulate 50 hours TIS. For this reason, the FAA has determined that the compliance time of this AD should be specified in both hours TIS and calendar time in order to assure this condition is not allowed to go uncorrected over time.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–10–13 Raytheon Aircraft Company: Amendment 39–12759; Docket No. 2001–CE–32–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial numbers
58P	TJ–3 through TJ–497.
60	P–4 through P–122 and P–124 through P–126.
A60	P–123 and P–127 through P–246.
B60	P–247 through P–596.
65–88	LP–1 through LP–26, LP–28, and LP–30 through LP–47.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to assure that clear and complete operating instructions are visible for opening the exit doors. If not visible and understandable, this could result in the inability to open the exit door during an emergency situation.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
Modify the exterior door operating procedures by installing the applicable placard as specified in the service bulletin.	Within the next 100 hours time-in-service (TIS) after July 8, 2002 (the effective date of this AD) or within the next 12 calendar months after July 8, 2002 (the effective date of this AD), whichever occurs first, unless already accomplished.	In accordance with the Accomplishment Instructions section of Raytheon Aircraft Mandatory Service Bulletin SB 11–3404, Issued: June, 2001.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Steven E. Potter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Aircraft Mandatory Service Bulletin SB 11–3404, Issued: June, 2001. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North

Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on July 8, 2002.

Issued in Kansas City, Missouri, on May 16, 2002.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–12885 Filed 5–23–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30309; Amdt. No. 3005]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box, 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, and 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective no less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on May 10, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective June 13, 2002*

Huntsville, AL, Madison County Executive, VOR/DME–B, Amdt 6
Huntsville, AL, Madison County Executive, GPS RWY 18, Orig, CANCELLED
Huntsville, AL, Madison County Executive, RNAV (GPS) RWY 18, Orig
Oakland, CA, Metropolitan Oakland Intl, VOR RWY 9R, Amdt 7D
Oakland, CA, Metropolitan Oakland Intl, ILS RWY 11, Amdt 5
Oakland, CA, Metropolitan Oakland Intl, ILS RWY 27R, Amdt 34
Oakland, CA, Metropolitan Oakland Intl, ILS RWY 29, Amdt 24
Oakland, CA, Metropolitan Oakland Intl, RNAV (GPS) RWY 9L, Orig
Oakland, CA, Metropolitan Oakland Intl, RNAV (GPS) RWY 9R, Orig
Oakland, CA, Metropolitan Oakland Intl, RNAV (GPS) RWY 11, Orig
Oakland, CA, Metropolitan Oakland Intl, GPS RWY 11, Orig-A, CANCELLED
Oakland, CA, Metropolitan Oakland Intl, RNAV (GPS) RWY 27L, Orig
Oakland, CA, Metropolitan Oakland Intl, GPS RWY 27L, Orig, CANCELLED
Oakland, CA, Metropolitan Oakland Intl, RNAV (GPS) RWY 27R, Orig
Oakland, CA, Metropolitan Oakland Intl, RNAV (GPS) RWY 29, Orig
Oakland, CA, Metropolitan Oakland Intl, GPS RWY 29, Orig, CANCELLED
Indianapolis, IN, Indianapolis Intl, VOR RWY 14, Amdt 26
Indianapolis, IN, Indianapolis Intl, NDB RWY 5R, Amdt 2
Indianapolis, IN, Indianapolis Intl, NDB RWY 23L, Amdt 2
Indianapolis, IN, Indianapolis Intl, NDB RWY 32, Amdt 15
Indianapolis, IN, Indianapolis Intl, ILS RWY 5L, Amdt 2
Indianapolis, IN, Indianapolis Intl, ILS RWY 5R, Amdt 3
Indianapolis, IN, Indianapolis Intl, ILS RWY 23L, Amdt 3
Indianapolis, IN, Indianapolis Intl, ILS RWY 23R, Amdt 2
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) RWY 5L, Orig
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) RWY 5R, Orig
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) RWY 14, Orig
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) RWY 23L, Orig
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) RWY 23R, Orig
Indianapolis, IN, Indianapolis Intl, RNAV (GPS) RWY 32, Orig
Norton, KS, Norton Muni, NDB OR GPS RWY 35, Amdt 2A, CANCELLED
Norton, KS, Norton Muni, NDB OR GPS RWY 17, Amdt 2A, CANCELLED
Omaha, NE, Eppley Airfield, ILS RWY 36, Orig
Andrews, NC, Andrews-Murphy, RNAV (GPS) RWY 8, Orig
Raleigh-Durham, NC, Raleigh-Durham Intl, VOR RWY 32, Amdt 3B
Raleigh-Durham, NC, Raleigh-Durham Intl, NDB RWY 5R, Amdt 20B
Ponca City, OK, Ponca City Muni, LOC RWY 17, Orig

** * * Effective August 8, 2002*

Alabaster, AL Shelby County, NDB OR GPS RWY 33, Orig, CANCELLED
Jacksonville, FL, Craig Muni, VOR/DME OR GPS RWY 32, Amdt 1
Orlando, FL Orland Intl, GPS RWY 36L, Amdt 1B
Sarasota (Bradenton), FL, Sarasota/Bradenton Intl, RADAR–1, Amdt 6
Greenville, NC, Pitt-Greenville, VOR/DME RNAV RWY 26, Amdt 3C, CANCELLED
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, VOR RWY 13, Amdt 1

Note: The FAA published the following amendments in Docket No. 30304, Amdt. No. 3001 to Part 97 of the Federal Aviation Regulations (67 FR 19667–19669; dated April 23, 2002) under section 97.27 effective 13 June 2002, which are hereby rescinded:

Grant, NE, Grant Muni, VOR/DME RWY 15, Orig
Norfolk, VA, Norfolk Intl, NDB/DME RWY 23 Orig
Norfolk, VA, Norfolk Intl, NDB/DME OR GPS RWY 23, Orig B, CANCELLED

The FAA published the following amendment in Docket No. 30306; Amdt. No. 3003 to Part 97 of the Federal Aviation Regulations (67 FR 21990–21992; dated May 2, 2002) under section 97.27 effective 13 June 2002, which is hereby amended as follows:

Monroe City, MO, Monroe City Regional, VOR/DME RNAV RWY 27, Amdt 1

The FAA published an Amendment in Docket No. 30306, Amdt No. 3003 to Part 97 of the Federal Aviation Regulations (67 FR 21990–21992; dated May 2, 2002) under section 97.33 effective 13 June 2002, which is hereby rescinded:

Richfield, UT, Richfield Muni, RNAV (GPS) RWY 19, Orig

[FR Doc. 02–12286 Filed 5–23–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lincomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia & Upjohn Co. The supplemental NADA provides for the use of lincomycin in swine feed for the control of porcine proliferative enteropathies (ileitis).

DATES: This rule is effective May 24, 2002.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7584, e-mail: svaughn@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199, filed a supplement to NADA 97–505 that provides for use of LINCOMIX 20 (lincomycin hydrochloride) and LINCOMIX 50 Feed Medications in medicated swine feeds for the control of porcine proliferative enteropathies (ileitis) caused by *Lawsonia intracellularis*. The supplemental application is approved as of February 28, 2002, and the regulations are amended in 21 CFR 558.325 to reflect the approval. Section 558.325 is also being revised to reflect a current format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning February 28, 2002, because the application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety

or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the application and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.325 is amended in paragraph (a) by removing ''paragraph (c)'' and in its place adding ''paragraph (d)''; by revising paragraphs (a)(1), (a)(5), and (a)(13); in paragraph (b) by removing ''*in edible products*''; and by revising paragraph (d) to read as follows:

§ 558.325 Lincomycin.

(a) * * *

(1) No. 000009 for 20 and 50 grams per pound.

* * * * *

(5) No. 043733 for 8 and 20 grams per pound.

* * * * *

(13) No. 017800 for 2.5 and 8 grams per pound.

* * * * *

(d) *Conditions of use*—(1) *Chickens*. It is used in feed as follows:

Lincomycin grams/ton	Indications for use	Limitations	Sponsor
(i) 2	Broilers: For control of necrotic enteritis caused by *Clostridium* spp. or other susceptible organisms.	As lincomycin hydrochloride monohydrate.	000009
(ii) 2 to 4	Broilers: For increased rate of weight gain and improved feed efficiency.	As lincomycin hydrochloride monohydrate.	000009

(2) *Swine*. It is used in feed as follows:

Lincomycin grams/ton	Indications for use	Limitations	Sponsor
(i) 20	Growing-finishing swine: For increased rate of weight gain.	Feed as sole ration. Not to be fed to swine that weigh more than 250 pounds (lb).	000009
(ii) 40	1. For control of swine dysentery.	Feed as sole ration; for use in swine on premises with a history of swine dysentery but where symptoms have not yet occurred, or following use of lincomycin at 100 grams (g)/ton for treatment of swine dysentery. Not to be fed to swine that weigh more than 250 lb.	000009 017800 043733
	2. For control of porcine proliferative enteropathies (ileitis) caused by *Lawsonia intracellularis*.	Feed as sole ration, or following use of lincomycin at 100 g/ton for control of porcine proliferative enteropathies (ileitis). Not to be fed to swine that weigh more than 250 lb.	000009
(iii) 100	1. For treatment of swine dysentery.	Feed as sole ration for 3 weeks or until signs of disease disappear. Not to be fed to swine that weigh more than 250 lb.	000009 017800 043733
	2. For control of porcine proliferative enteropathies (ileitis) caused by *Lawsonia intracellularis*.	Feed as sole ration for 3 weeks or until signs of disease disappear. Not to be fed to swine that weigh more than 250 lb.	000009
(iv) 200	For reduction in the severity of swine mycoplasmal pneumonia caused by *Mycoplasma hyopneumoniae*.	Feed as sole ration for 3 weeks. Not to be fed to swine that weigh more than 250 lb.	000009 017800

(3) Lincomycin may also be used in combination with:

(i) Amprolium and ethopabate or amprolium and ethopabate with roxarsone in accordance with § 558.58.

(ii) Clopidol in accordance with § 558.175.

(iii) Decoquinate in accordance with § 558.195.

(iv) Fenbendazole as provided in § 558.258.

(v) Halofuginone in accordance with § 558.265.

(vi) Ivermectin as in § 558.300.

(vii) Lasalocid alone or with roxarsone in accordance with § 558.311.

(viii) Monensin alone or with roxarsone in accordance with § 558.355.

(ix) Nicarbazin alone or with narasin or roxarsone as in § 558.366.

(x) Pyrantel as in § 558.485.

(xi) Robenidine in accordance with § 558.515.

(xii) Roxarsone in accordance with § 558.530.

(xiii) Salinomycin with or without roxarsone as in § 558.550.

(xiv) Zoalene in accordance with § 558.680.

Dated: May 14, 2002.

Acting Director,

Office of New Animal Drug Evaluation,Center for Veterinary Medicine.

[FR Doc. 02–13164 Filed 5–23–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[OK–029–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The Oklahoma Department of Mines (Department or Oklahoma) proposed revisions to its rules about areas designated by act of congress as unsuitable for mining and coal exploration operations. Oklahoma intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: May 24, 2002.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet: *mwolfrom@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * * ; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Oklahoma program on January 19, 1981. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program in the January 19, 1981, **Federal Register** (46 FR 4902). You can also find later actions concerning Oklahoma's program and program amendments at 30 CFR 936.15 and 936.16.

II. Submission of the Amendment

By letter dated November 20, 2001 (Administrative Record No. OK–988.02), Oklahoma sent us an amendment to its approved regulatory program under SMCRA (30 U.S.C. 1201 *et seq.*). Oklahoma sent the amendment in response to an August 23, 2000, letter (Administrative Record No. OK–988) that we sent to Oklahoma in accordance with 30 CFR 732.17(c).

We announced receipt of the amendment in the December 21, 2001, **Federal Register** (66 FR 65858). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on January 22, 2002. We received comments from one Federal agency and one State agency.

During our review of the amendment, we identified concerns relating to definitions at OAC 460:20–7–3, procedures at OAC 460:20–7–5, and various editorial errors. We notified Oklahoma of the concerns by letters dated December 13, 2001, January 16, 2002, and March 6, 2002 (Administrative Record Nos. OK–988.06, OK–988.08, and OK–988.12).

On February 21 and March 26, 2002, Oklahoma sent us revisions to its amendment (Administrative Record Nos. OK–988.10 and OK–988.14). Based upon Oklahoma's revisions, we reopened the public comment period in the April 5, 2002, **Federal Register** (67 FR 16341). The public comment period ended on April 22, 2002. We did not receive any comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

A. Minor Revisions to Oklahoma's Rules

Oklahoma proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved rules:

OAC 460:20–7–5(b)(2), rights determination and OAC 460:20–7–5(g), applicability to lands designated as unsuitable by Congress.

Because these changes are minor, we find that they will not make Oklahoma's rules less effective than the Federal regulations.

B. OAC 460:20–7–3 Definitions

Oklahoma deleted its definition of ''surface coal mining operations which exist on the date of enactment'' because this term no longer appears in its rules.

We are approving Oklahoma's deletion because it is consistent with OSM's deletion of the Federal counterpart definition of ''surface coal mining operations which exist on the date of enactment.'' *See* 64 FR 70766, dated December 17, 1999.

C. Revisions To Oklahoma's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

The State rules listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations.

Topic	State rule	Federal counterpart regulation
Authority	OAC 460:20–7–2	30 CFR 761.3.
Definition of Community or Institutional Building	OAC 460:20–7–3	30 CFR 761.5.
Definition of Valid Existing Rights	OAC 460:20–7–3	30 CFR 761.5.
Areas Where Surface Coal Mining Operations are Prohibited or Limited	OAC 460:20–7–4 Introductory paragraph, (2), (3), and (4)(B).	30 CFR 761.11 Introductory paragraph, (b), (c), (d)(2).
Exception for Existing Operations	OAC 460:20–7–4.1	30 CFR 761.12(a).
Procedures—Obligations at Time of Permit Application Review	OAC 460:20–7–5(a), (b)(1), (f)(1) and (3).	30 CFR 761.17(a), (b), (d)(1) and (3).

Topic	State rule	Federal counterpart regulation
Procedures—Compatibility Findings for Surface Coal Mining Operations on Federal Lands in National Forests.	OAC 460:20–7–5(c)	30 CFR 761.13.
Procedures—Relocating or Closing a Public Road or Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of a Public Road.	OAC 460:20–7–5(d)	30 CFR 761.14.
Procedures—Waiving the Prohibition on Surface Coal Mining Operations Within the Buffer Zone of an Occupied Dwelling.	OAC 460:20–7–5(e)	30 CFR 761.15.
Procedures—Submission and Processing of Requests for Valid Existing Rights Determinations.	OAC 460:20–7–5(h)	30 CFR 761.16.
Permit Requirements for Exploration Removing More Than 250 Tons of Coal.	OAC 460:20–13–5(b)(14), (d)(2)(D).	30 CFR 772.12(b)(14), (d)(2)(iv).

Because Oklahoma's proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On December 5, 2001, and February 26, 2002, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Oklahoma program (Administrative Record Nos. OK–988.03 and OK–988.11). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to obtain the written concurrence of EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Oklahoma proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record Nos. OK–988.03 and OK–988.11). EPA responded on January 2, 2002 (Administrative Record No. OK–988.04), that it had no comments.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On December 5, 2001, and February 26, 2002, we requested comments on Oklahoma's amendment (Administrative Record Nos. OK–988.03 and OK–988.11). The SHPO responded on January 3, 2002 (Administrative Record No. OK–988.05). The SHPO was concerned that several of Oklahoma's proposed rules did not consider properties that are ''eligible for inclusion on the National Register of Historic Places.''

On January 29, 2002 (Administrative Record No. 988.09), we sent a letter telling the SHPO that Oklahoma's proposed rules are consistent with Section 522(e)(3) of SMCRA and the Federal regulations. We also explained that even though SMCRA and the Federal regulations do not require consideration of properties eligible for listing on the National Register of Historic Places when making a determination of whether a person has valid existing rights to mine in areas where surface coal mining operations are normally prohibited or limited, the permit application requirements and other provisions of the Oklahoma rules and the Federal regulations do require this consideration for these areas.

V. Director's Decision

Based on the above findings, we approve the amendment Oklahoma sent to us on November 20, 2001, and as revised on February 21 and March 26, 2002.

We approve the rules proposed by Oklahoma with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR part 936, which codify decisions concerning the Oklahoma program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this final rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

In this rule, the State is adopting valid existing rights standards that are similar to the standards in the Federal definition at 30 CFR 761.5. Therefore, this rule has the same takings implications as the Federal valid existing rights rule. The takings implications assessment for the Federal valid existing rights rule appears in Part XXIX.E of the preamble to that rule. See 64 FR 70766, 70822–27, December 17, 1999.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 26, 2002.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 936 is amended as set forth below:

PART 936—OKLAHOMA

1. The authority citation for Part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 936.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 936.15 Approval of Oklahoma regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * *	* * *	* * *
November 20, 2001	May 24, 2002	OAC 460:20–7–2; 20–7–3; 20–7–4 Introductory paragraph, (2), (3), and (4)(B); 20–7–4.1; 20–7–5(a), (b)(1) and (2), (c), (d), (e), (f)(1) and (3), (g), (h); 20–13–5(b)(14), (d)(2)(D).

[FR Doc. 02–13105 Filed 5–23–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 240

RIN 1510–AA45

Indorsement and Payment of Checks Drawn on the United States Treasury

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends 31 CFR Part 240, which governs the indorsement and payment of checks drawn on the United States Treasury (Treasury), by incorporating procedures relating to the implementation of the Debt Collection Improvement Act of 1996 (DCIA). In particular, this rule describes Treasury Check Offset, a new debt collection tool established by the DCIA. The DCIA authorizes the Secretary of the Treasury to collect certain debts, owed to the Treasury by financial institutions presenting Treasury checks to a Federal Reserve Bank, by directing Federal Reserve Banks to withhold credit from such presenting banks. This rule also renumbers certain sections and updates various addresses provided in 31 CFR Part 240.

DATES: Effective May 24, 2002. Comments will be accepted until June 24, 2002.

ADDRESSES: All comments concerning this interim rule should be addressed to Lester Smalls, Reclamation Branch Manager, Financial Processing Division, Financial Management Service, Prince Georges Center II Building, 3700 East-West Highway, Room 724–D, Hyattsville, Maryland 20782. Comments also may be emailed to: Lester.Smalls@fms.treas.gov.

FOR FURTHER INFORMATION CONTACT: Lester Smalls, Reclamation Branch Manager, Financial Processing Division, at (202) 874–7945; Ronda Kent or Randall S. Lewis, Senior Attorneys, at (202) 874–6680.

SUPPLEMENTARY INFORMATION:

Background

This interim rule revises 31 CFR Part 240 by adding new provisions in a new § 240.9 relating to TCO, a debt collection tool authorized by the DCIA, Pub. L. 104–134, Title III, § 31001(d)(4), codified at 31 U.S.C. 3712(e). The DCIA authorizes the Secretary to collect amounts owed to the Treasury by financial institutions presenting Treasury checks to the Federal Reserve for payment by the United States (''presenting banks''). Under TCO, the Department of the Treasury (Department) will direct a Federal Reserve Bank to withhold credit from such presenting banks and apply the funds to satisfy a presenting bank's debt to the Treasury. In accordance with the DCIA, the Department will collect by means of TCO only if reclamation demand and protest as described in 31 CFR 240.7 and administrative offset as described in 31 CFR 240.8 are unsuccessful. This interim rule is unrelated to the Notices of Proposed Rulemaking published on September 21, 1995 (60 FR 48940) and May 30, 1997 (62 FR 29314).

Regulatory Analyses

Executive Order 12866, Regulatory Planning and Review

It has been determined that this regulation is not a significant regulatory action. This interim rule will not have an annual effect of $100 million or more on the economy, and will not adversely affect in a material way the economy, productivity, competition, jobs, environment, public health or safety, or State, local, or tribal governments or communities. Further, this interim rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, nor will it materially alter the budgetary effects of entitlements, grants, user fees, or loan programs, or the rights or obligations of their recipients. This interim rule does not raise novel legal or policy issues.

Clarity of Regulations

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this interim rule easier to understand. For example:

- Have we organized the material in this interim rule to suit your needs?
- Are the requirements in the interim rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- What else could we do to make this interim rule easier to understand?

Please send any comments you have on the clarity of this interim rule to the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, a regulatory flexibility analysis is not required. The revisions to part 240 in this interim rule incorporate statutory changes, and do not create, in and of themselves, a new debt collection tool or otherwise create a new limit on the rights of affected parties, including small entities. Moreover, the revisions to part 240 concern the collection of delinquent debts by means of TCO, and are in furtherance of specific authority established by the DCIA. In particular, the DCIA provides that, ''by presenting Treasury checks for payment a presenting bank is deemed to authorize this offset.'' 31 U.S.C. 3712(e)(1). Consequently, any economic impact on small entities will be the result of specific statutory authority, rather than a direct result of this interim rule.

Administrative Procedure Act

We find good cause for issuing this interim rule without prior notice and comment. Under the Administrative Procedure Act, an agency is permitted to issue a rule without prior notice and comment when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest. 5 U.S.C. 553(b)(B). The provisions of the DCIA codified at 31 U.S.C. 3712(e) authorize the collection of amounts owed by presenting banks by means of the withholding of credit from financial institutions presenting Treasury checks for ultimate charge to the account of the Treasury. This rule merely incorporates the TCO provisions of the DCIA into 31 CFR part 240, and clarifies the interaction between the TCO provisions and pre-existing provisions relating to reclaiming amounts owed to the Treasury by presenting banks and collection of such amounts by means of administrative offset. With one exception, this interim rule does not substantively amplify the plain language of the DCIA. The only substantive revision to 31 CFR part 240 that is not included in the TCO provisions of the DCIA is the provision codified at 31 CFR 240.9(d) which provides that TCO does not apply to claims based on reclamations that have been outstanding for more than 10 years. Given that this provision limits the application of the TCO provisions of the DCIA and, therefore, in itself does not adversely affect presenting banks, we find that it is unnecessary to require prior notice and comment for that provision. Nevertheless, the public is invited to submit comments on the interim rule. Comments received will be

taken into account before a final rule is issued.

For the same reasons, it has been determined that a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(3).

List of Subjects in 31 CFR Part 240

Banks, Banking, Checks, Counterfeit checks, Federal Reserve system, Forgery, Guarantees.

Authority and Issuance

For the reasons set out in the preamble, 31 CFR Part 240 is amended as follows.

PART 240—INDORSEMENT AND PAYMENT OF CHECKS DRAWN ON THE UNITED STATES TREASURY

1. The authority citation for part 240 is revised to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3328, 3331, 3343, 3711, 3712, 3716, 3717; 332 U.S. 234 (1947); 318 U.S. 363 (1943).

§§ 240.9–240.15 [Redesignated as §§240.10–240.16]

2. Sections 240.9–240.15 are redesignated as §§ 240.10–240.16.

3. Section 240.7 is amended by revising paragraphs (a)(1), (b), and (c)(1) to read as follows:

(a) * * *

(1) That Treasury intends to collect the debt through administrative offset in accordance with § 240.8 if the reclamation is not paid within 120 days of the reclamation date, and if administrative offset is unsuccessful, that Treasury intends to collect the debt through Treasury Check Offset in accordance with § 240.9; * * *

(b) Requests for an appointment to inspect and copy Treasury's records with respect to a reclamation and requests to enter into repayment agreements should be sent in writing to: Department of the Treasury, Financial Management Service, Financial Processing Division, Reclamation Branch, Room 700–D, P.O. Box 1849, Hyattsville, MD 20788.

(c)(1) If a presenting bank wishes to contest its liability for the principal amount demanded, it shall send a protest, i.e., a written statement and copies of all documentary evidence (e.g., affidavits, account agreements, signature cards) and other written information raising a question of law or fact which, if resolved in the presenting bank's favor, would show that the presenting bank is not liable, to: Department of the Treasury, Financial Management Service, Financial Processing Division, Reclamation Branch, Room 700–D, P.O. Box 1849, Hyattsville, MD 20788. The Director, Financial Processing Division, who has supervisory authority over the Reclamation Branch, or his/her authorized subordinate, shall consider and decide any protest properly submitted under this paragraph. Neither the Director, Financial Processing Division, nor any of his/her subordinates, shall have any involvement in the process of making findings or demands under § 240.6(a). In order to be considered, and to be timely, a protest must be received not later than 90 days after the reclamation date. Treasury will refrain from collection in accordance with § 240.8 or § 240.9 while a timely protest is being considered. Unresolved protested items will be appropriately annotated on the monthly summary of debt statement.

* * * * *

4. Section 240.8(c) is revised to read as follows:

§ 240.8 Offset.

* * * * *

(c) If Treasury is unable to collect an amount owed by use of the offset described in paragraph (a) of this section, Treasury shall take such action against the presenting bank as may be necessary to protect the interests of the United States, including Treasury Check Offset in accordance with § 240.9 or referral to the Department of Justice.

* * * * *

5. New § 240.9 is added to read as follows:

§ 240.9 Treasury Check Offset.

(a) If Treasury is unable to effect collection pursuant to § 240.7 or § 240.8 of this part, it will collect the principal amount of the reclamation, accrued interest, penalty, and administrative costs through Treasury Check Offset. Treasury Check Offset occurs when, at the direction of Treasury, a Federal Reserve Bank withholds, that is, offsets, credit from a presenting bank (e.g., a financial institution presenting a Treasury check for ultimate charge to the account of the United States Treasury). The amount of credit offset is applied to the principal amount of the reclamation, accrued interest, penalties, and administrative costs owed by the presenting bank. As provided by the provisions of 31 U.S.C. 3712(e), by presenting Treasury checks for payment, the presenting bank is deemed to authorize Treasury Check Offset.

(b) If Treasury effects offset under this section and it is later determined that the presenting bank paid the principal amount of the reclamation and accrued interest, penalties, and administrative costs thereon, or that a presenting bank was not liable for the amount of the reclamation, Treasury will promptly refund to the presenting bank the amount of its payment. Treasury may refund the amount either by applying the amount to another reclamation debt in accordance with this Part or other applicable law, or by returning the amount to the presenting bank.

(c) Treasury Check Offset is used for the purpose of collecting debt owed by a presenting bank to the Federal Government. As a consequence, presenting banks shall not be able to use the fact that Treasury checks presented for payment have not been paid as the basis for a claim against Treasury, a Federal Reserve Bank, or other persons or entities, including payees or other indorsers of checks, for the amount of the credit offset pursuant to 31 U.S.C. 3712(e) and this section.

(d) This section does not apply to a claim based upon a reclamation that has been outstanding for more than 10 years from the date of delinquency.

6. Redesignated § 240.13(a)(2)(ii) is revised to read as follows:

§ 240.13 Checks issued to incompetent payees.

(a) * * *

(2) * * *

(ii) Was issued in payment of principal or interest on U.S. securities, it shall be forwarded to the Bureau of the Public Debt, Division of Customer Service, P.O. Box 426, Parkersburg, WV 26106.

* * * * *

Dated: May 16, 2002.

Richard L. Gregg,

Commissioner.

[FR Doc. 02–13033 Filed 5–23–02; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–022]

Special Local Regulations for Marine Events; Severn River, College Creek, and Weems Creek, Annapolis, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.518 for the

U.S. Naval Academy Crew Races, a marine event to be held May 26, 2002, on the waters of the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

EFFECTIVE DATES: 33 CFR 100.518 is effective from 5 a.m. to 8 a.m. on May 26, 2002.

FOR FURTHER INFORMATION CONTACT: Ron Houck, Marine Information Specialist, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, at (410) 576–2674.

SUPPLEMENTARY INFORMATION: The U.S. Naval Academy will sponsor crew races on the waters of the Severn River at Annapolis, Maryland. The event will consist of intercollegiate crew rowing teams racing along a 2000-meter course on the waters of the Severn River. A fleet of spectator vessels is expected to gather near the event site to view the competition. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.518 will be in effect for the duration of the event. Under provisions of 33 CFR 100.518, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: May 16, 2002.

James D. Hull,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 02–13139 Filed 5–23–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD05–02–021]

Special Local Regulations for Marine Events; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.501 for the Portsmouth 250th Birthday Party Fireworks, to be held May 26, 2002, over the waters of the Elizabeth River between Norfolk and Portsmouth, Virginia. This action is necessary to provide for the safety of life on navigable waters during the event. The effect will be to restrict general navigation in the regulated area for the safety of spectators, participants and vessels transiting the event area.

EFFECTIVE DATES: 33 CFR 100.501 is effective from 6:30 p.m. to 9:30 p.m. EDT on May 26, 2002.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Jerry Saffold, Marine Events Coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, VA 23703, at (757) 483–8521.

SUPPLEMENTARY INFORMATION: On Saturday, May 26, 2002, Ports Events, Inc. will sponsor the Portsmouth 250th Birthday Party Fireworks over the waters of the Elizabeth River, between Norfolk and Portsmouth, Virginia. The event will consist of a pyrotechnics display lasting approximately 45 minutes. A fleet of spectator vessels is expected to gather near the event site to view the fireworks. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.501 will be in effect for the duration of the event. Under provisions of 33 CFR 100.501, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: May 16, 2002.

James D. Hull,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 02–13135 Filed 5–23–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Huntington–02–004]

RIN 2115–AA97

Safety Zone; Ohio River Miles 355.5 to 356.5, Portsmouth, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the waters of the Ohio River beginning at mile 355.5 and ending at mile 356.5, extending the entire width of the river. This safety zone is needed to protect spectators and vessels from the potential safety hazards associated with a fireworks display. Entry into this zone is prohibited, unless specifically authorized by the Captain of the Port, Huntington or his designated representative.

DATES: This rule is effective from 9:30 p.m. to 11 p.m. on July 4, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Huntington-02–004] and are available for inspection or copying at Marine Safety Office Huntington, 1415 6th Avenue, Huntington, West Virginia, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer, Rick Leffler, Marine Safety Office Huntington, Marine Event Coordinator at (304) 529–5524.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Information was made available to the Coast Guard in insufficient time to publish a NPRM. Publishing a NPRM with a comment period would be contrary to public interest since action is needed to protect vessels and mariners from the hazards associated with a fireworks display.

Background and Purpose

The Captain of the Port Huntington, is establishing a safety zone between mile 355.5 and 356.5 of the Ohio River, extending the entire width of the river. This safety zone is needed to protect spectators and vessels from the potential safety hazards associated with a fireworks display. All vessels are prohibited from transiting within this safety zone unless authorized by the Captain of the Port, Huntington or his designated representative.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This regulation will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the Ohio River from mile 355.5 to 356.5, from 9:30 p.m. to 11 p.m. on July 4, 2002. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for only a short period of time and mariners will be notified in advance of the zone through broadcast notice to mariners.

If you are a small business entity and are significantly affected by this regulation please contact Chief Petty Officer Rick Leffler, Marine Safety Office Huntington at (304) 529–5524.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we so discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 160.5; 49 CFR 1.46.

2. A new temporary § 165.T08–048 is added to read as follows:

§ 165.T08–048 Ohio River Miles 355.5 to 356.5, Portsmouth, Ohio.

(a) *Location.* The following area is a safety zone: the waters of the Ohio River from mile 355.5 to mile 356.5 extending the entire width of the river.

(b) *Effective date.* This section is effective from 9:30 p.m. to 11 p.m. on July 4, 2002.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of vessels into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Huntington or his designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Huntington, or his designated representative. They may be contacted via VHF–FM Channel 13 or 16 or via telephone at (304) 529–5524.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Huntington and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: May 13, 2002.

L. D. Stroh,

Commander, U.S. Coast Guard, Captain of the Port Huntington.

[FR Doc. 02–13140 Filed 5–23–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Huntington–02–002]

RIN 2115–AA97

Safety Zone; Kanawha River Miles 56.0 to 57.0, Charleston, West Virginia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the certain waters of the Kanawha River. This safety zone is needed to protect spectators and vessels from the potential safety hazards associated with a fireworks display. Entry into this zone is prohibited, unless specifically authorized by the Captain of the Port, Huntington or his designated representative.

DATES: This rule is effective from 9:15 p.m. to 9:45 p.m. on June 2, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Huntington–02–002] and are available for inspection or copying at Marine Safety Office Huntington, 1415 6th Avenue, Huntington, West Virginia, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer, Rick Leffler, Marine Safety Office Huntington, Marine Event Coordinator at (304) 529–5524.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and, under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Information was made available to the Coast Guard in insufficient time to publish a NPRM or to have a Temporary final rule published in the **Federal Register** 30 days prior to the event. Publishing a NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect vessels and mariners from the hazards associated with a fireworks display.

Background and Purpose

The Captain of the Port Huntington, is establishing a safety zone between mile 56.0 and 57.0 of the Kanawha River, extending the entire width of the river. This safety zone is needed to protect spectators and vessels from the potential safety hazards associated with a fireworks display. All vessels are prohibited from transiting within this safety zone unless authorized by the Captain of the Port, Huntington or his designated representative.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This regulation will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Kanawha River from mile 56.0 to 57.0, from 9:15 p.m. to 9:45 p.m. on June 2, 2002. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for only a short period of time and mariners will be notified in advance of the zone through broadcast notice to mariners.

If you are a small business entity and are significantly affected by this regulation please contact Chief Petty Officer Rick Leffler, Marine Safety Office Huntington at (304) 529–5524.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise

determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we so discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 160.5; 49 CFR 1.46.

2. A new temporary § 165.T08–046 is added to read as follows:

§ 165.T08–046 Kanawha River Miles 56.0 to 57.0, Charleston, West Virginia.

(a) *Location.* The following area is a safety zone: the waters of the Kanawha River from mile 56.0 to mile 57.0 extending the entire width of the river.

(b) *Effective date.* This section is effective from 9:15 p.m. to 9:45 p.m. on June 2, 2002.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of vessels into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Huntington or his designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Huntington, or his designated representative. They may be contacted via VHF–FM Channel 13 or 16 or via telephone at (304) 529–5524.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Huntington and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: May 13, 2002.

L.D. Stroh,

Commander, U.S. Coast Guard, Captain of the Port, Huntington.

[FR Doc. 02–13138 Filed 5–23–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–021]

Safety Zone; Captain of the Port Detroit Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: The Coast Guard is implementing safety zones for annual fireworks displays in the Captain of the Port Detroit Zone during June 2002. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Detroit Zone.

DATES: Effective from 12:01 a.m.(Eastern Time) on June 1, 2002 to 11:59 p.m.(Eastern Time) on June 30, 2002.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, MI at (313) 568–9580.

SUPPLEMENTARY INFORMATION: The Coast Guard is implementing the permanent

safety zones in 33 CFR 165.907 (66 FR 27868, May 21, 2001), for fireworks displays in the Captain of the Port Detroit Zone during June 2002. The following safety zones are in effect for fireworks displays occurring in the month of June 2002:

(1) *Bay-Rama Fishfly Festival, New Baltimore, MI.* Location: All waters off New Baltimore City Park, Lake St. Clair-Anchor Bay bounded by the arc of a circle with a 300-yard radius with its center located at approximate position 42°41′ N, 082°44′ W, on June 26, 2002, from 9 p.m. to 11 p.m.

(2) *St. Clair Shores Fireworks, St. Clair Shores, MI.* Location: All waters of Lake St. Clair within a 300-yard radius of the fireworks barge in approximate position 42°32′ N, 082°51′ W, about 1000-yards east of Veterans Memorial Park (off Masonic Rd.), St. Clair Shores, MI on June 28, 2002, from 10 p.m. to 10:30 p.m.

(3) *Port Huron 4th of July Fireworks, Port Huron, MI.* Location: All waters of the Black River within a 300-yard radius of the fireworks barge in approximate position 42°58′ N, 082°25′ W about 300-yards east of 223 Huron Ave., in the Black River on June 30, 2002, from 10 p.m. until 11 p.m.

(4) *Grosse Pointe Farms Fireworks, Grosse Pointe Farms, MI.* Location: All waters of Lake St. Clair within a 300-yard radius of the fireworks barge in approximate position 42°23′ N, 082°52′ W, about 300-yards east of Grosse Pointe Farms on June 29, 2002 from 9:30 p.m. to 10:30 p.m.

(5) *Sigma Gamma Assoc., Grosse Pointe Farms, MI.* Location: The waters off Ford's Cove, Lake St. Clair bounded by the arc of a circle with a 300-yard radius with its center in approximate position 42°27′ N, 082°52′ W on June 24, 2002 from 6 p.m. to 10 p.m.

In order to ensure the safety of spectators and transiting vessels, these safety zones will be in effect for the duration of the events. In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Detroit to transit the safety zone. Approval will be made on a case-by case basis. Requests must be made in advance and approved by the Captain of Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Group Detroit on channel 16, VHF–FM.

Dated: May 16, 2002.

P.G. Gerrity,

Commander, U.S. Coast Guard Captain of the Port Detroit.

[FR Doc. 02–13136 Filed 5–23–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Huntington–02–003]

RIN 2115–AA97

Safety Zone; Ohio River Miles 307.0 to 308.0, Huntington, West Virginia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the waters of the Ohio River beginning at mile 307.0 and ending at mile 308.0, extending the entire width of the river. This safety zone is needed to protect spectators and vessels from the potential safety hazards associated with a fireworks display. Entry into this zone is prohibited, unless specifically authorized by the Captain of the Port, Huntington or his designated representative.

DATES: This rule is effective from 9:30 p.m. to 10:45 p.m. on June 29, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Huntington–02–003] and are available for inspection or copying at Marine Safety Office Huntington, 1415 6th Avenue, Huntington, West Virginia, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer, Rick Leffler, Marine Safety Office Huntington, Marine Event Coordinator at (304) 529–5524.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Information was made available to the Coast Guard in insufficient time to publish a NPRM. Publishing a NPRM with a comment period would be contrary to public interest since action is needed to protect vessels and mariners from the hazards associated with a fireworks display.

Background and Purpose

The Captain of the Port Huntington, is establishing a safety zone between mile 307.8 and 308.0 of the Ohio River, extending the entire width of the river. This safety zone is needed to protect spectators and vessels from the potential safety hazards associated with a fireworks display. All vessels are prohibited from transiting within this safety zone unless authorized by the Captain of the Port, Huntington or his designated representative.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10 (e) of the regulatory policies and procedures of DOT is unnecessary. This regulation will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Ohio River from mile 307.0 to 308.0, from 9:30 p.m. to 10:45 p.m. on June 29, 2002. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for only a short period of time and mariners will be notified in advance of the zone through broadcast notice to mariners.

If you are a small business entity and are significantly affected by this regulation please contact Chief Petty Officer Rick Leffler, Marine Safety Office Huntington at (304) 529–5524.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we so discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 160.5; 49 CFR 1.46.

2. A new temporary § 165.T08–047 is added to read as follows:

§ 165.T08–047 Ohio River Miles 307.0 to 308.0, Huntington, West Virginia.

(a) *Location.* The following area is a safety zone: the waters of the Ohio River from mile 307.0 to mile 308.0 extending the entire width of the river.

(b) *Effective date.* This section is effective from 9:30 p.m. to 10:45 p.m. on June 29, 2002.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of vessels into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Huntington or his designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Huntington, or his designated representative. They may be contacted via VHF–FM Channel 13 or 16 or via telephone at (304) 529–5524.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Huntington and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: May 13, 2002.

L.D. Stroh,

Commander, U.S. Coast Guard, Captain of the Port Huntington.

[FR Doc. 02–13141 Filed 5–23–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

United States Navy Restricted Area, Port Gardner and East Waterway, Washington

AGENCY: United States Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is amending its regulations to establish a restricted area in waters adjacent to the Everett Naval Base at

Everett, Washington. This action will effectively establish a 300-foot restricted zone around moored vessels and major piers of Naval Station Everett, and lesser distances from the other piers, basins, and shorelines of the installation. The regulations are necessary to ensure public safety and meet the Navy's security, safety, and operational requirements pertaining to the moorage and movement of major combatants and other vessels at a major naval base.

EFFECTIVE DATE: June 24, 2002.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CECW–OR, 441 G Street, NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, DC at (202) 761–4618, or Mr. Jack Kennedy, Corps of Engineers, Seattle District, Regulatory Branch, at (206) 764–6907.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3) the Corps is amending the restricted area regulations in 33 CFR part 334 by adding a new section 334.1215 which establishes a restricted area in waters adjacent to Naval Station Everett at Everett, Washington.

Procedural Requirements

A. Review Under Executive Order 12866

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

B. Review Under the Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act (Public Law 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps expects that the economic impact of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal will have no significant economic impact on small entities.

C. Review Under the National Environmental Policy Act

The Seattle District has prepared an Environmental Assessment (EA) for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, that this action will not have a significant impact to the quality of the human environment, and preparation of an Environmental Impact Statement (EIS) is not required. The EA may be reviewed at the Seattle District office listed at the end of **FOR FURTHER INFORMATION CONTACT,** above.

D. Unfunded Mandates Act

This rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

E. Submission to Congress and the General Accounting Office

Pursuant to Section 801(a)(1)(A) of the Administrative Procedure Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army has submitted a report containing this Rule to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office. This Rule is not a major Rule within the meaning of Section 804(2) of the Administrative Procedure Act, as amended.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps amends 33 CFR Part 334 as follows:

PART 334–DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3)

2. Add § 334.1215 to read as follows:

§ 334.1215 Port Gardner, Everett Naval Base, Naval Restricted Area, Everett, Washington.

(a) *The area.* The waters of Port Gardner and East Waterway surrounding Naval Station Everett beginning at Point 1, a point near the northwest corner of Naval Station Everett at latitude 47°59′40″ North, longitude 122°13′23.5″ West and thence to latitude 47°59′40″ North, longitude 122°13′30″ West (Point 2); thence to latitude 47°59′20″ North, longitude 122°13′33″ West (Point 3); thence to latitude 47°59′13″ North, longitude 122°13′38″ West (Point 4); thence to latitude 47°59′05.5″ North, longitude 122°13′48.5″ West (Point 5); thence to latitude 47°58′51″ North, longitude 122°14′04″ West (Point 6); thence to latitude 47°58′45.5″ North, longitude 122°13′53″ West (Point 7); thence to latitude 47°58′45.5″ North, longitude 122°13′44″ West (Point 8); thence to latitude 47°58′48″ North, longitude 122°13′40″ West (Point 9); thence to latitude 47°58′59″ North, longitude 122°13′30″ West (Point 10); thence to latitude 47°59′14″ North, longitude 122°13′18″ West (Point 11); thence to latitude 47°59′13″ North, longitude 122°13′12″ West (Point 12); thence to latitude 47°59′20″ North, longitude 122°13′08″ West (Point 13); thence to latitude 47°59′20″ North, longitude 122°13′02.5″ West (Point 14), a point upon the Naval Station's shore in the northeast corner of East Waterway.

(b) *The regulation.* (1) All persons and vessels are prohibited from entering the waters within the restricted area for any reason without prior written permission from the Commanding Officer of the Naval Station Everett.

(2) Mooring, anchoring, fishing and/or recreational boating shall not be allowed within the restricted area without prior written permission from the Commanding Officer, Naval Station Everettt.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commanding Officer, Naval Station Everett and such agencies and persons as he/she shall designate.

Dated: May 9, 2002.

Karen Durham-Aguilera,

Acting Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 02–13061 Filed 5–23–02; 8:45 am]

BILLING CODE 3710–92–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0021; FRL–6834–2]

Pesticides; Tolerance Exemptions for Polymers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final rule action to add a new section which lists the pesticide chemicals that are exempt from the requirement of a tolerance

because they meet the criteria established by the Agency to identify certain polymers that are of low risk. This section contains those polymers whose tolerance exemptions were established post-Food Quality Protection Act (FQPA) of 1996 and are based on the polymer's meeting the criteria described in 40 CFR 723.250. The Agency is acting on its own initiative.

DATES: This direct final rule is effective on September 23, 2002, without further notice, unless EPA receives a relevant adverse comment by July 23, 2002. If EPA receives a relevant adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** It is imperative that you identify docket ID number OPP–2002–0021 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6304; fax number: (703) 305–0599; e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, pesticide manufacturer, or antimicrobial pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532 32561	Crop production Animal production Food manufacturing Pesticide manufacturing Antimicrobial pesticides

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0021. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0021 in the subject line on the first page of your response. EPA also encourages you to submit your comments electronically, if at all possible, which will facilitate timely receipt by the Agency and avoid potential delays associated with the processing of government mail.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0021. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the direct final rule.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Authority

A. What is the Agency's Authority for Taking this Action?

This direct final rule is issued pursuant to section 408(e) of the Federal Food, Drug, and Comestic Act (FFDCA), as amended by FQPA (21 U.S.C. 346a(e)). Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or tolerance exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of FFDCA. If food containing pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342 (a)).

B. Why is EPA Issuing this as a Direct Final Rule?

EPA is issuing this action as a direct final rule without prior proposal because the Agency believes that this action is not controversial and is not likely to result in any adverse comments, inasmuch as this action simply shifts existing tolerance exemptions for certain polymers from one paragraph of 40 CFR 180.1001 to a new section in 40 CFR part 180. It will not alter the quantity or nature of residues that might lawfully be present in food or feed.

This direct final rule is effective on September 23, 2002, without further notice, unless EPA receives a relevant adverse comment by July 23, 2002. If however, EPA receives a relevant adverse comment during the comment period, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect. EPA will also publish a proposed rulemaking in a future edition of the **Federal Register**. EPA will address the comments on the direct final rule as part of that proposed rulemaking.

III. What Action is the Agency Taking?

EPA is establishing a new § 180.960 to contain exemptions from the requirement of a tolerance for polymers that under reasonably foreseeable circumstances will pose no appreciable risks to human health. The Agency has established a set of criteria to identify categories of polymers that should present low or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The criteria for molecular weight (MW) and oligomeric material are specified in 40 CFR 723.250(e). The following exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d).

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the Toxic Substances Control Act (TSCA) Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average MW greater than or equal to 10,000 daltons.

IV. Why are the Recodified Polymers Expressed in a Different Manner in the New Section?

These polymers were approved for use in pesticide products using criteria that identify low-risk polymers. Given the use of these criteria for approving certain polymers, defining appropriate limitations or use patterns is unnecessary. All polymers approved using these criteria can be used as an inert ingredient in any pesticide chemical product, including antimicrobial pesticide products, provided that such use is in accordance with good agricultural or manufacturing practices. In fact, creation of the new section will streamline the tolerance exemptions in 40 CFR part 180 since low-risk polymers need only be listed once, instead of being separately listed in multiple sections.

V. Regulatory Assessment Requirements

EPA is taking direct final action to add a new section to part 180, subpart D which lists the pesticide chemicals that are polymers approved for use in pesticide products using the criteria in 40 CFR 723.250 that identify a low-risk polymer. This section contains those polymers whose tolerance exemptions were established post-FQPA based on the criteria described in 40 CFR 723.250 . Since this direct final rule does not impose any new requirements, it is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), or Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

This direct final rule directly regulates food processors, food handlers, and food retailers, but does not affect States, local, or Tribal governments directly. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). This action will not have substantial direct effects on State or tribal governments, on the relationship between the Federal government and States, or Indian tribes, or on the distribution of power and responsibilities between the Federal government and States or Indian tribes. As a result, this action does not require any action under Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), or under Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Nor does it

impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Nor does it require special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that the creation of a new § 180.960 will not have significant negative economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows. This direct final rule does not impose any requirements; rather, it simply reorganizes requirements currently existing in EPA regulations. No existing tolerance exemptions are lost by the creation of the new section.

VI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 14, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346 (a) and 374.

2. A new § 180.960 is added to subpart D of part 180 to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

Residues resulting from the use of the following substances, that meet the definition of a polymer and the criteria specified for defining a low-risk polymer in 40 CFR 723.250, as an inert ingredient in a pesticide chemical formulation, including antimicrobial pesticide chemical formulations, are exempted from the requirement of a tolerance under FFDCA section 408, if such use is in accordance with good agricultural or manufacturing practices.

Polymer	CAS No.
Acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt, minimum number average molecular weight (in amu), 1,250	89678–90–0
Acrylic acid terpolymer, partial sodium salt, minimum number average molecular weight (in amu), 2,400	151006–66–5
Acrylic polymers composed of one or more of the following monomers: Acrylic acid, methyl acrylate, ethyl acrylate, butyl acrylate, hydroxyethyl acrylate, hydroxypropyl acrylate, hydroxybutyl acrylate, carboxyethyl acrylate, methacrylic acid, methyl methacrylate, ethyl methacrylate, butyl methacrylate, isobutyl methacrylate, hydroxyethyl methacrylate, hydroxypropyl methacrylate, hydroxybutyl methacrylate, lauryl methacrylate, and stearyl methacrylate; with none and/or one or more of the following monomers: Acrylamide, N-methyl acrylamide, N-octylacrylamide, maleic anhydride, maleic acid, monoethyl maleate, diethyl maleate, monooctyl maleate, dioctyl maleate; and their corresponding sodium potassium, ammonium, isopropylamine, triethylamine, monoethanolamine, and/or triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu), 1,200	None
α-alkyl (C_{12}–C_{15}) - ω- hydroxypoly(oxypropylene)poly(oxyethylene)copolymers (where the poly(oxypropylene) content is 3–60 moles and the poly(oxyethylene) content is 5–80 moles), the resulting ethoxylated propoxylated (C_{12}–C_{15}) alcohols having a minimum molecular weight (in amu), 1,500	68551–13–3
Butene, homopolymer minimum number average molecular weight (in amu), 1,330	9003–29–6
Butyl acrylate-vinyl acetate-acrylic acid copolymer, minimum number average molecular weight (in amu), 18,000	65405–40–5
Dimethylpolysiloxane minimum number average molecular weight (in amu), 6,800	63148–62–9
Dimethyl silicone polymer with silica, minimum number average molecular weight (in amu), 1,100,000	67762–90–7
1, 2-Ethanediamine, polymer with methyl oxirane and oxirane, minimum number average molecular weight (in amu), 1,100	26316–40–5
Hexamethyl disilizane, reaction product with silica, minimum number average molecular weight (in amu), 645,000	68909–20–6
12-Hydroxystearic acid-polyethylene glycol copolymer, minimum number average molecular weight (in amu), 3,690	70142–34–6
Maleic anhydride-diisobutylene copolymer, sodium salt, minimum number average molecular weight (in amu) 5,0007–18,000	37199–81–8
Maleic anhydride-methylstyrene copolymer sodium salt, minimum number average molecular weight (in amu), 15,000	60092–15–1

Polymer	CAS No.
Methacrylic acid-methyl methacrylate-polyethylene glycol methyl ether methacrylate copolymer, minimum number averge molecular weight (in amu), 3,700	100934–04–1
Methacrylic copolymer, minimum number average molecular weight (in amu), 15,000	63150–03–8
Methyl methacrylate-methacrylic acid-monomethoxypolyethylene glycol methacrylate copolymer,) minimum number average molecular weight (in amu), 2,730	119724–54–8
Oxirane, methyl-, polymer with oxirane, mono[2-(2-butoxyethoxy) ethyl] ether, minimum number average molecular weight (in amu), 2,500	85637–75–8
Polyethylene glycol-polyisobutenyl anhydride-tall oil fatty acid copolymer, minimum number average molecular weight (in amu), 2,960	68650–28–2
Polyoxyethylated sorbitol fatty acid esters; the sorbitol solution containing up to 15% water is reacted with 20–50 moles of ethylene oxide and aliphatic alkanoic and/or alkenoic fatty acids C_8 through C_{22} with minor amounts of associated fatty acids; the resulting polyoxyethylene sorbitol ester having a minimum molecular weight (in amu), 1,300	None
Polyvinyl chloride, minimum number average molecular weight (in amu), 29,000	9002–86–2
Polyvinyl acetate, copolymer with maleic anhydride, partially hydrolyzed, sodium salt, minimum number average molecular weight (in amu), 53,000	None
Polyvinylpyrrolidone butylated polymer, minimum number average molecular weight (in amu), 9,500	26160–96–3
2-Propene-1-sulfonic acid sodium salt, polymer with ethenol and ethenyl acetate, number average molecular weight (in amu) 6,000–12,000	None
2-Propenoic acid, polymer with 2-propenamide, sodium salt, minimum number average molecular weight (in amu), 18,000	25085–02–3
2-Propenoic acid, sodium salt, polymer with 2-propenamide, minimum number average molecular weight (in amu), 18,000	25987–30–8
Silane, dichloromethyl- reaction product with silica minimum number average molecular weight (in amu), 3,340,000	68611–44–9
Styrene, copolymers with acrylic acid and/or methacrylic acid, with none and/or one or more of the following monomers: Acrylamidopropyl methyl sulfonic acid, methallyl sulfonic acid, 3-sulfopropyl acrylate, 3-sulfopropyl methacrylate, hydroxypropyl methacrylate, hydroxypropyl acrylate, hydroxyethyl methacrylate, and/or hydroxyethyl acrylate; and its sodium, potassium, ammonium, monoethanolamine, and triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu), 1,200	None
Styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer, minimum number average molecular weight (in amu), 4,200	30795–23–4
Tetraethoxysilane, polymer with hexamethyldisiloxane, minimum number average molecular weight (in amu), 6,500	104133–09–7
Vinyl acetate polymer with none and/or one or more of the following monomers: Ethylene, propylene, N-methyl acrylamide, acrylamide, monoethyl maleate, diethyl maleate, monooctyl maleate, dioctyl maleate, maleic anhydride, maleic acid, octyl acrylate, butyl acrylate, ethyl acrylate, methyl acrylate, acrylic acid, octyl methacrylate, butyl methacrylate, ethyl methacrylate, methyl methacrylate, methacrylic acid, carboxyethyl acrylate, and diallyl phthalate; and their corresponding sodium, potassium, ammonium, isopropylamine, triethylamine, monoethanolamine and/or triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu), 1,200	None
Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate, minimum number average molecular weight (in amu), 20,000	None
Vinyl pyrrolidone-acrylic acid copolymer, minimum number average molecular weight (in amu), 6,000	28062–44–4

§ 180.1001 [Amended]

3. Section 180.1001 is amended as follows:

i. The table in paragraph (c) is amended by removing the entries listed below:

Inert ingredients	Limits	Uses
* *	* * *	* *
Acrylic acid, styrene, α-methyl styrene Copolymer, ammonium salt (CAS Reg. No. 89678–90–0), minimum number average molecular weight (in amu) 1250.	.....	Encapsulating agent, dispensers, resins, fibers and beads
Acrylic acid terpolymer, partial sodium salt (CAS Reg. No. 151006–66–5), minimum number average molecular weight (in amu) 2,400.	.....	Dispersant

Inert ingredients	Limits	Uses
Acrylic polymers composed of one or more of the following monomers: Acrylic acid, methyl acrylate, ethyl acrylate, butyl acrylate, hydroxyethyl acrylate, hydroxypropyl acrylate, hydroxybutyl acrylate, carboxyethyl acrylate, methacrylic acid, methyl methacrylate, ethyl methacrylate, butyl methacrylate, isobutyl methacrylate, hydroxyethyl methacrylate, hydroxypropyl methacrylate, hydroxybutyl methacrylate, lauryl methacrylate, and stearyl methacrylate; with none and/or one or more of the following monomers: Acrylamide, *N*-methyl acrylamide, *N*-octylacrylamide, maleic anhydride, maleic acid, monoethyl maleate, diethyl maleate, monooctyl maleate, dioctyl maleate; and their corresponding sodium, potassium, ammonium, isopropylamine, triethylamine, monoethanolamine,and/or triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu) 1,200.	.....	Components of films, binders, carriers, adhesives, or related adjuvants
* * * * * * *		
α-alkyl (C_{12}–C_{15})-ω-hydroxypoly (oxypropylene)poly (oxyethylene)copolymers (where the poly(oxypropylene) content is 3–60 moles and the poly(oxyethylene) content is 5–80 moles), the resulting ethoxylated propoxylated (C_{12}-C_{15}) alcohols having a minimum molecular weight (in amu) of 1,500, CAS Reg. No. 68551–13–3.	Not to exceed 20% of pesticide formulations	Surfactant
* * * * * * *		
Butene, homopolymer minimum number average molecular weight (in amu) 1,330 (CAS Reg. No. 9003–29–6).	.....	Sticker, surfactant and related adjuvant
Butyl acrylate-vinyl acetate-acrylic acid copolymer (CAS Reg. No. 65405–40–5), minimum number average molecular weight 18,000 daltons.	.....	Surfactants, related adjuvants of surfactants
* * * * * * *		
Dimethyl silicone polymer with silica, Minimum number average molecular weight (in amu) 1,100,000 daltons, CAS Reg. No. 67762–90–7.	.....	Moisture barrier, anti-caking agent, anti-settling agent, thickening agent
Dimethylpolysiloxane minimum number average molecular weight (in amu) 6,800 (CAS Reg. No. 63148–62–9).	.....	Defoaming agent
* * * * * * *		
1,2-Ethanediamine, polymer with methyl oxirane and oxirane, 1,100 minimum number average molecular weight (in amu) (CAS Reg. No. 26316–40–5).	.....	Surfactant, dispersing agent
* * * * * * *		
Hexamethyldisilizane, reaction product with silica, minimum number average molecular weight (in amu) 645,000 daltons, CAS Reg. No. 68909–20–6.	.....	Moisture barrier, anti-caking agent, anti-settling agent, thickening agent
* * * * * * *		
12-Hydroxystearic acid-polyethylene glycol copolymer (CAS Reg. No. 70142–34–6) minimum number average molecular weight (in amu) 3,690.	.....	Surfactant, dispersing agent, suspending agent, related adjuvant.
* * * * * * *		
Maleic anhydride- diisobutylene copolymer, sodium salt (CAS Reg. No. 37199–81–8), minimum number average molecular weight (in amu) 5,000–18,000.	.....	Suspending agent and dispersing agent
Maleic anhydride-α-methylstyrene copolymer sodium salt, minimum number average molecular weight (in amu) is 15,000 (CAS Reg. No. 60092–15–1).	.....	Surfactant
* * * * * * *		
Methacrylic acid-methyl methacrylate-polyethylene glycol methyl ether methacrylate copolymer, minimum number average molecular weight (in amu) is 3,700 (CAS Reg. No. 100934–04–1).	.....	Surfactant
Methacrylic Copolymer (CAS Reg. No. 63150–03–8), minimum number average molecular weight (in amu) 15,000.	.....	Inert
* * * * * * *		
Methyl methacrylate-methacrylic acid-monomethoxypolyethylene glycol methacrylate copolymer (CAS Reg. No. 119724–54–8) minium number average molecular weight (in amu) 2,730.	.....	Surfactant, dispersing agent, suspending agent, related adjuvant.

Inert ingredients	Limits	Uses
* *	* * *	* *
Oxirane, methyl-, polymer with oxirane, mono[2-(2-butoxyethoxy) ethyl]ether CAS Reg. No. 85637–75–8), minimum number average molecular weight (in .amu) 2,500.	15% Max	Emulsifier, dispersant, Surfactant or related adjuvant of surfactant.
* *	* * *	* *
Polyethylene glycol-polyisobutenyl anhydride-tall oil fatty acid copolymer (CAS Reg. No. 68650–28–2) minimum number average molecular weight (in amu) 2,960.		Surfactant, dispersing agent, suspending agent, related adjuvant.
* *	* * *	* *
Polyoxyethylated sorbitol fatty acid esters; the sorbitol solution containing up to 15% water is reacted with 20–50 moles of ethylene oxide and aliphatic alkanoic and/or alkenoic fatty acids C_8 through C_{22} with minor amounts of associated fatty acids; the resulting polyoxyethylene sorbitol ester having a minimum MW (in amu) of 1,300.		Dispersants, emulsifiers, surfactants, related adjuvants of surfactants.
* *	* * *	* *
Polyvinyl acetate, copolymer with maleic anhydride, partially hydrolyzed, sodium salt, minimum number average MW (in amu), 53,000.		Component of water soluble films
Polyvinyl chloride (CAS Reg. No. 9002–86–2), minimum number average molecular weight (in amu) 29,000.		Carrier
* *	* * *	* *
Polyvinylpyrrolidone butylated polymer (CAS Reg. No. 26160–96–3), minimum number average molecular weight (in amu) 9,500.		Surfactants, related adjuvant of surfactants and binder
* *	* * *	* *
2-Propene-1-sulfonic acid sodium salt, polymer with ethenol and ethenyl acetate, number average molecular weight (in amu) 6,000–12,000.		Binding agent
2-Propenoic acid, polymer with 2-propenamide, sodium salt, minimum number average molecular weight (in amu), 18,000; CAS Reg. No. 25085–02–3.		Carrier
2-Propenoic acid, sodium salt, polymer with 2-propenamide, minium number average molecular weight (in amu), 18,000; CAS Reg. No. 25987–30–8.		Carrier
* *	* * *	* *
Silane, dichloromethyl-, reaction product with silica minimum number average molecular weight (in amu) 3,340,000 daltons, CAS Reg. No. 68611–44–9.		Moisture barrier, anti-caking agent, anti-settling agent, thickening agent
* *	* * *	* *
Styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer (CAS Reg. No. 30795–23–4), minimum number average molecular weight (in amu) 4,200.		Encapsulating agent, dispensers, resins, fibers and beads
* *	* * *	* *
Styrene, copolymers with acrylic acid and/or methacrylic acid, with none and/or one or more of the following monomers: acrylamidopropyl methyl sulfonic acid, methallyl sulfonic acid, 3-sulfopropyl acrylate, 3-sulfopropyl methacrylate, hydroxypropyl methacrylate, hydroxypropyl acrylate, hydroxyethyl methacrylate, and/or hydroxy-ethyl acrylate; and its sodium, potassium, ammonium, monoethanolamine, and triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu) of 1,200.	Not to exceed 25% in formulated product	Carriers, adhesives, binders, suspending and dispersing agents, related adjuvants in pesticide formulations
* *	* * *	* *
Tetraethoxysilane, polymer with hexamethyldisiloxane, 6,500 minimum number average molecular weight (in amu) (CAS Reg. No. 104133–09–7).		Antifoam agent

Inert ingredients	Limits	Uses
* *	* * *	* *
Vinyl acetate polymer with none and/or one or more of the following monomers: ethylene, propylene, N-methyl acrylamide, acrylamide, monoethyl maleate, diethyl maleate, monooctyl maleate, dioctyl maleate, maleic anhydride, maleic acid, octyl acrylate, butyl acrylate, ethyl acrylate, methyl acrylate, acrylic acid, octyl methacrylate, butyl methacrylate, ethyl methacrylate, methyl methacrylate, methacrylic acid carboxyethyl acrylate, and diallyl phthalate; and their corresponding sodium, potassium, ammonium, isopropylamine, triethylamine, monoethanolamine and/or triethanolamine salts; the resulting polymer having a minium number average molecular weight (in amu) 1200..	.....	Components of films, binders, carriers, adhesives, or related adjuvants
Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate, minimum number average molecular weight (in amu) 20, 000.	.....	Water soluble resin
Vinyl pyrrolidone-acrylic acid copolymer (CAS Reg. No. 28062–44–4), minimum number average molecular weight (in amu) 6,000.	.....	Adhesive, dispersion stabilizer and coating for sustained release granules
* *	* * *	* *

ii. The table in paragraph (e) is amended by removing the entries listed below:

Inert ingredients	Limits	Uses
*	* * * * * *	
Acrylic acid, styrene, α-methyl styrene copolymer, ammonium salt (CAS Reg. No. 89678–90–0), minimum number average molecular weight (in amu) 1250.	.....	Encapsulating agent, dispensers, resins, fibers and beads
Acrylic acid terpolymer, partial sodium salt (CAS Reg. No.151006–66–5), minimum number average molecular weight (in amu) 2,400.	.....	Dispersant
Acrylic polymers composed of one or more of the following monomers: Acrylic acid, methyl acrylate, ethyl acrylate, butyl acrylate, hydroxyethyl acrylate, hydroxypropyl acrylate, hydroxybutyl acrylate, carboxyethyl acrylate, methacrylic acid, methyl methacrylate, ethyl methacrylate, butyl methacrylate, isobutyl methacrylate, hydroxyethyl methacrylate, hydroxypropyl methacrylate, hydroxybutyl methacrylate, lauryl methacrylate, and stearyl methacrylate; with none and/or one or more of the following monomers: Acrylamide, *N*-methyl acrylamide, *N*-octylacrylamide, maleic anhydride, maleic acid, monoethyl maleate, dietyl maleate, monooctyl maleate, dioctyl maleate; and their corresponding sodium, potassium, ammonium, isopropylamine, triethylamine, monoethanolamine, and/or triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu) 1,200..	.....	Components of films, binders, carriers, adhesives, or related adjuvants
*	* * * * * *	
α-alkyl (C_{12}-C_{15})-ω-hydroxypoly (oxypropylene)poly (oxyethylene)copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles), the resulting ethoxylated propoxylated (C_{12}-C_{15}) alcohols having a minimum molecular weight (in amu) of 1,500, CAS Reg. No. 68551–13–3.	Not to exceed 20% of pesticide formulations	Surfactant
*	* * * * * *	
Butene, homopolymer minimum number average molecular weight (in amu) 1,330 (CAS Reg. No. 9003–29–6).	.....	Sticker, surfactant and related adjuvant
Butyl acrylate-vinyl acetate-acrylic acid copolymer (CAS Reg. No. 65405–40–5), minimum number average molecular weight 18,000 daltons.	.....	Surfactants, related adjuvants or surfactants

Inert ingredients	Limits	Uses
*	* * * * * * *	
Dimethyl silicone polymer with silica, Minimum number average molecular weight (in amu) 1,100,000 daltons, CAS Reg. No. 67762–90–7.		Moisture barrier, anti-caking agent, anti-settling agent, thickening agent
*	* * * * * * *	
Hexamethyldisilizane, reaction product with silica, Minimum number average molecular weight (in amu) 645,000 daltons, CAS Reg. No. 68909–20–6.		Moisture barrier, anti-caking agent, anti-settling agent, thickening agent
*	* * * * * * *	
12-Hydroxystearic acid-polyethylene glycol copolymer) (CAS Reg. No. 70142–34–6) minimum number average molecular weight (in amu) 3,690.		Surfactant, dispersing agent, suspending agent, related adjuvant.
*	* * * * * * *	
Maleic anhydride-diisobutylene copolymer, sodium salt (CAS Reg. No. 37199–81–8), minimum number average molecular weight (in amu) 5,000–18,000.		Suspending agent and dispersing agent
*	* * * * * * *	
Methacrylic Copolymer (CAS Reg. No. 63150–03–8), minimum number average molecular weight (in amu) 15,000.		Inert
*	* * * * * * *	
Methyl methacrylate-methacrylic acid-monomethoxypolyethylene glycol methacrylate copolymer (CAS Reg. No.119724–54–8) minium number average molecular weight (in amu) 2,730.		Surfactant, dispersing agent, suspending agent, related adjuvant.
*	* * * * * * *	
Oxirane, methyl-, polymer with oxirane, mono[2-(2-butoxyethoxy) ethyl]ether CAS Reg. No. 85637–75–8), minimum number average molecular weight (in amu) 2,500.	15% Max	Emulsifier, dispersant, Surfactant or related adjuvant of surfactant.
*	* * * * * * *	
Polyethylene glycol-polyisobutenyl anhydride-tall oil fatty acid (CAS Reg. No. 68650–28–2) minimum number average molecular weight (in amu) 2,960.		Surfactant, dispersing agent, suspending agent, related adjuvant.
*	* * * * * * *	
Polyoxyethylated Sorbitol Fatty Acid Esters; the sorbitol solution containing up to 15% water is reacted with 20–50 moles of ethylene oxide and aliphatic alkanoic and/or alkenoic fatty acids C_8 through C_{22} with minor amounts of associated fatty acids; the resulting polyoxyethylene sorbitol ester having a minimum molecular weight (in amu) of 1,300.		Dispersants, emulsifiers, surfactants, related adjuvants of surfactants
*	* * * * * * *	
Polyvinylpyrrolidone butylated polymer (CAS Reg. No. 26160–96–3), minimum number-average molecular weight (in amu) 9,500.		Surfactants, related adjuvant of surfactants and binder
*	* * * * * * *	
2-Propene-1-sulfonic acid sodium salt, polymer with wthanol and ethenyl acetate, number average molecular weight (in amu) 6,000–12,000.		Binding agent
*	* * * * * * *	
Silane, dichloromethyl-, reaction product with silica, Minimum number average molecular weight (in amu) 3,340,000 daltons, CAS Reg. No. 68611–44–9.		Moisture barrier, anti-caking agent, anti-settling agent, thickening agent
*	* * * * * * *	
Styrene, 2-ethylhexyl acrylate, butyl acrylate copolymer (CAS Reg. No. 30795–23–4), minimum number average molecular weight (in amu) 4200.		Encapsulating agent, dispensers, resins, fibers and beads

Inert ingredients	Limits	Uses
Styrene, copolymers with acrylic acid and/or methacrylic acid, with none and/or one or more of the following monomers: acrylamidopropyl methyl sulfonic acid, methallyl sulfonic acid, 3-sulfopropyl acrylate, 3-sulfopropyl methacrylate, hydroxypropyl methacrylate, hydroxypropyl acrylate, hydroxyethyl methacrylate, and/or hydroxyethyl acrylate; and its sodium, potassium, ammonium, monoethanolamine, and triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu) of 1,200.	Not to exceed 25% in formulated product	Carriers, adhesives, binders, suspending and dispersing agents, related adjuvants in pesticide formulations.
* * * * * * *		
Tetraethoxysilane, polymer with hexamethyldisiloxane, 6,500 minimum number average molecular weight (in amu) (CAS Reg. No. 104133–09–7).	.....	Antifoam agent
* * * * * * *		
Vinyl acetate polymer with none and/or one or more of the following monomers: ethylene, propylene, N-methyl acrylamide, acrylamide, monoethyl maleate, diethyl maleate, monooctyl maleate, dioctyl maleate, maleic anhydride, maleic acid, octyl acrylate, butyl acrylate, ethyl acrylate, methyl acrylate, acrylic acid, octyl methacrylate, butyl methacrylate, ethyl methacrylate, methyl methacrylate, methacrylic acid carboxyethyl acrylate, and diallyl phthalate; and their corresponding sodium, potassium, ammonium, isopropylamine, triethylamine, monoethanolamine and/or triethanolamine salts; the resulting polymer having a minium number average molecular weight (in amu) of 1200..	.....	Components of films, binders, carriers, adhesives, or related adjuvants
Vinyl alcohol-vinyl acetate copolymer, benzaldehyde-o-sodium sulfonate condensate, minimum number average molecular weight (in amu) 20,000.	.....	Water soluble resin
Vinyl pyrrolidone-acrylic, acid copolymer (CAS Reg. No. 28062–44–4), minimum number average molecular weight (in amu) 6,000.	.....	Adhesive, dispersion stabilizer and coating for sustained release granules
* * * * * * *		

[FR Doc. 02–12974 Filed 5–23–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0030; FRL–6834–8]

RIN 2070–AC18

Pesticides; Tolerance Exemptions for Minimal Risk Active and Inert Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is adding a new section which lists the pesticide chemicals that are exempted from the requirement of a tolerance based on the Agency's determination that these chemicals are of ''minimal risk.'' The pesticide chemicals listed in the new section include both active and inert ingredients. Development of the new section will be accomplished over time in a multi-step process. As the first step, the existing tolerance exemptions for commonly consumed food commodities, animal feed items, and edible fats and oils are recodified in the newly created section, albeit in a different format. This new format provides greater clarification in defining a minimal risk pesticide chemical as well as increasing the number of substances that are currently considered to be minimal risk.

With the creation of the new section, the existing tolerance exemptions (in other sections of the CFR) for these chemical substances are no longer necessary. Therefore, this document revokes the tolerance exemptions for 40 inert ingredients. The Agency is acting on its own initiative.

DATES: This final rule is effective on May 24, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0030, must be received on or before July 23, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket ID number OPP–2002–0030 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6304; fax number: (703) 305–0599; e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you formulate or market pesticide products. Potentially affected

categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing
Producers	32561	Antimicrobial pesticides

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

2. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0030. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of January 15, 2002 (67 FR 1925) (FRL–6807–8), EPA issued a proposal pursuant to FFDCA section 408, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170) to amend 40 CFR by creating a new paragraph (g) in 40 CFR 180.1001. This new paragraph would contain a listing of pesticide chemicals that are considered to be of minimal risk. No comments were received at the OPP docket in response to this proposed rule. However, the Agency did receive three e-mails requesting additional information on the Agency's proposed action. Discussions with these individuals indicated support for the Agency's proposal but some confusion on language used to describe the excluded substances. The confusion resulted from the placement of the language describing the excluded substances, not the language itself. Based on the need for additional clarification, the Agency moved this language which provided greater clarity.

However, since publication of the proposed rule the Agency has determined instead to create a new section, 40 CFR 180.950, to hold these tolerance exemptions.

Based on the reasons set forth in the preamble to the proposed rule, EPA is creating a new section in 40 CFR part 180, subpart D. All commonly consumed food items and all animal feed items with the exception of the exclusions discussed in this document, are exempt from the requirement of a tolerance under the newly established 40 CFR 180.950.

The following 40 tolerance exemptions are revoked:

1. In 40 CFR 180.1001 (c): Almond shells; apple pomace; citrus meal; cocoa shells; coconut oil; corn cobs; corn meal; corn oil; cornstarch; corn syrup; cottonseed oil; dextrose; fish oil; grape pomace, dried; lard; lactose; molasses; oatmeal; oats; orange pomace; peanut shells; rice bran; soybean oil; starch (potato, tapioca, and wheat); and sucrose.

2. In 40 CFR 180.1001 (d): Cinnamon; clove; coffee; corn; corn gluten meal, hydrolyzed; fenugreek; low erucic acid rapeseed oil, conforming to 21 CFR 184.1555(c) (CAS Reg. No. none); oat hulls; wheat; and wheat flour.

3. In 40 CFR 180.1001 (e): Corn syrup; dextrose, and sucrose.

4. Also, 40 CFR 180.1164 and 180.1194 are revoked.

However, only 39 can be counted toward tolerance reassessment.

The Agency is placing expiration dates on nine existing tolerance exemptions for known allergen-containing food commodities. At this time, the Agency cannot consolidate the overlapping and duplicative tolerance exemptions for allergen-containing commodities that currently exist in 40 CFR part 180.

These regulatory actions are part of the tolerance reassessment requirements of the FFDCA section 408(q), as amended by FQPA. By law, EPA is required to reassess 66% of the tolerances in existence on August 2, 1996, by August 2002, or about 6,400 tolerances. These regulatory actions, the reassessment of 39 tolerance exemptions, would be counted toward the August 2002 deadline.

B. What is the Agency's Authority for Taking this Action?

This final rule is issued under FFDCA section 408, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170). Section 408(e) of FFDCA authorizes EPA to establish, modify, or revoke tolerances, or exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities and processed foods.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new FFDCA section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0030 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 23, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket ID number OPP–2002–0030 to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

The Agency is acting on its own initiative under FFDCA section 408(e) in revoking these 40 tolerance exemptions and in establishing a new section in 40 CFR part 180, subpart D. Under Executive Order 12866 entitled, *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB). Because this final rule has been exempted from review under Executive Order 12866 due to its lack of significance, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

This final rule simply establishes a new section in 40 CFR part 180, subpart D that contains a list of minimal risk pesticide chemicals. Under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that reorganizing 40 CFR part 180 does not have significant negative economic impact on a substantial number of small entities. Creating a new section does not have a substantive effect and hence causes no impact.

This final rule places expiration dates on nine existing tolerance exemptions for various known allergen-containing food commodities. Currently, the Agency's regulatory approach as written in various CFR paragraphs and sections is inconsistent. This 3–year transition period will allow sufficient time to examine the uses of these food commodities, and discuss product re-formulation with affected registrants. At the completion of this process there will be a single consistent approach for all food commodities used as pesticide chemicals.

This final rule also revokes 40 tolerance exemptions, including:

1. Revoking duplicative and overlapping tolerance exemptions for commonly consumed (non-allergen) food commodities.

2. Revoking and consolidating the existing tolerance exemptions for animal feed items.

Further the final rule allows the use of additional minimal risk animal feed items not previously exempted for use in pesticide products, and establishes a tolerance exemption for the use of edible oils derived from allergens since the available information indicates that the use of these oils is not of concern.

Pursuant to the RFA, the Agency hereby certifies that establishing new tolerance exemptions for edible oils derived from allergens and animal feed items not previously exempted does not have significant negative economic impact on a substantial number of small entities. By contrast, the amendments and revisions that expand tolerance exemptions are beneficial to the regulated community by increasing the number of minimal risk inert ingredients for use in pesticide formulations.

Pursuant to the RFA, the Agency previously assessed whether revocations of tolerances or tolerance exemptions for pesticide products no longer in use in the United States might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020) (FRL–5753–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, the available information concerning the pesticide chemicals listed in this final rule, the transition time for the known allergen containing commodities and considering that all of the revoked tolerance exemptions are covered in the established 40 CFR 180.950, the Agency certifies that this action does not have a significant economic impact on a substantial number of small entities. Furthermore, the Agency knows of no extraordinary circumstances that exist that change EPA's previous analysis.

In addition, the Agency has determined that this action does not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this final rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' This final rule does not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule''as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 14, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to readas follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. A new § 180.950 is added to read as follows:

§ 180.950 Tolerance exemptions for minimal risk active and inert ingredients.

Unless specifically excluded, residues resulting from the use of the following substances as either an inert or an active ingredient in a pesticide chemical formulation, including antimicrobial pesticide chemicals, are exempted from the requirement of a tolerance under

FFDCA section 408, if such use is in accordance with good agricultural or manufacturing practices.

(a) *Commonly consumed food commodities.* Commonly consumed food commodities means foods that are commonly consumed for their nutrient properties. The term commonly consumed food commodities shall only apply to food commodities (whether a raw agricultural commodity or a processed commodity) in the form the commodity is sold or distributed to the public for consumption.

(1) Included within the term commonly consumed food commodities are:

(i) Sugars such as sucrose, lactose, dextrose and fructose, and invert sugar and syrup.

(ii) Spices such as cinnamon, cloves, and red pepper.

(iii) Herbs such as basil, anise, or fenugreek.

(2) Excluded from the term commonly consumed food commodities are:

(i) Any food commodity that is adulterated under 21 U.S.C. 342.

(ii) Both the raw and processed forms of peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat.

(iii) Alcoholic beverages.

(iv) Dietary supplements.

(b) *Animal feed items.* Animal feed items means meat meal and all items derived from field crops that are fed to livestock excluding both the raw and processed forms of peanuts, tree nuts, milk, soybeans, eggs, fish, crustacea, and wheat. Meat meal is an animal feed composed of dried animal fat and protein that has been sterilized. Other than meat meal, the term animal feed item does not extend to any item designed to be fed to animals that contains, to any extent, components of animals. Included within the term animal feed items are:

(1) The hulls and shells of the commodities specified in paragraph (a)(2)(ii) of this section, and cocoa beans.

(2) Bird feed such as canary seed.

(3) Any feed component of a medicated feed meeting the definition of an animal feed item.

(c) *Edible fats and oils.* Edible fats and oils means all edible (food or feed) fats and oils, derived from either plants or animals, whether or not commonly consumed, including products derived from hydrogenating (food or feed) oils, or liquefying (food or feed) fats.

(1) Included within the term edible fats and oils are oils (such as soybean oil) that are derived from the commodities specified in paragraph (a)(2)(ii) of this section when such oils are highly refined via a solvent extraction procedure.

(2) Excluded from the term edible fats and oils are plant oils used in the pesticide chemical formulation specifically to impart their characteristic fragrance and/or flavoring.

3. Section 180.1001 is amended as follows:

(a) In the table in paragraph (c) remove the entries for: Almond shells; apple pomace; citrus meal; cocoa shells; coconut oil; corn cobs; corn meal; corn oil; cornstarch; corn syrup; cottonseed oil; dextrose; fish oil; grape pomace, dried; lard; lactose; molasses; oatmeal; oats; orange pomace; peanut shells; rice bran; soybean oil; starch (potato, tapioca, and wheat); and sucrose.

(b) In the table in paragraph (d) remove the entries for: Cinnamon; clove; coffee; corn; corn gluten meal, hydrolyzed; fenugreek; low erucic acid rapeseed oil, conforming to 21 CFR 184.1555(c) (CAS Reg. No. None); oat hulls; wheat; and wheat flour.

(c) In the table in paragraph (e) remove the entries for: Corn syrup; dextrose, and sucrose.

4. Section 180.1001 is further amended by:

(a) Revising the following entries in the tables to paragraphs (c), (d), and (e) and

(b) Adding the entry ''wheat, including flour, bran, and starch'' to the table in paragraph (c).

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
*	* * * * *	*
Casein	Expires May 24, 2005.	Surfactant, emulsifier, wetting agent
*	* * * * *	*
Fish meal	Expires May 24, 2005.	Solid diluent, carrier
*	* * * * *	*
Soy protein, isolated	Expires May 24, 2005	Adhesive
Soybean flour	Expires May 24, 2005.	Surfactant
*	* * * * *	*
Wheat, including flour, bran, and starch	Expires May 24, 2005.	Solid diluent carrier, attractant
*	* * * * *	*

(d) * * *

Inert ingredients	Limits	Uses
*	* * * * *	*
Sodium caseinate	Expires May 24, 2005.	Suspending agent and binder
*	* * * * *	*

(e) * * *

Inert ingredients	Limits	Uses
*	* * * * *	*
Soy protein, isolated	Expires May 24, 2005.	Adhesive
*	* * * * *	*
Wheat shorts	Expires May 24, 2005.	Solid diluent
*	* * * * *	*

5. Section 180.1071 is revised to read as follows:

§ 180.1071 Egg solids (whole); time-limited exemption from the requirement of a tolerance.

A time-limited tolerance exemption expiring May 24, 2005, is established for residues of whole egg solids (of at least feed grade quality) when used as an animal repellent in or on almonds and applied to the growing crop in accordance with good agricultural practices.

§ 180.1164 [Removed]

6. Section 180.1164 is removed.

§ 180.1194 [Removed]

7. Section 180.1194 is removed.

[FR Doc. 02–12973 Filed 5–23–02; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Chapter I

Centers for Medicare & Medicaid Services

42 CFR Chapters IV and V

[CMS–3088–FC]

RIN 0938–AL38

Office of Inspector General—Health Care; Medicare and Medicaid Programs; Peer Review Organizations: Name and Other Changes—Technical Amendments

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: In accordance with the Secretary's announcement of his quality initiative, this technical regulation revises all references to ''peer review organization'' and ''PRO'' in chapters I, IV, and V of title 42 of the Code of Federal Regulations. This regulation also makes conforming changes to the general definitions section.

DATES: *Effective date:* May 24, 2002.

Comment date: Comments will be considered if we receive them no later than 5 p.m. on July 23, 2002, at the appropriate address, as provided below.

ADDRESSES: In commenting, please refer to file code CMS–3088–FC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3088–FC, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received timely in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses:

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Valerie Mattison-Brown, (410) 786–5958.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Monday through Friday from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call (410) 786–9994.

I. Background

Currently, the Social Security Act uses the term ''utilization and quality control peer review organizations'' to describe those entities which contract with CMS for the performance of the functions prescribed by title XI of the Social Security Act. The CMS regulations at 42 CFR 400.200, currently define a ''peer review organization as an organization that has a contract with CMS, under part B of title XI of the Social Security Act, to perform utilization and quality control review of the health care furnished, or to be furnished, to Medicare beneficiaries.''

In November 2001, the Secretary of the Department of Health and Human Services (HHS) launched a quality initiative to provide Medicare and Medicaid beneficiaries and their families with easy to understand, comparative information for selecting quality sources of healthcare such as nursing homes and hospitals. The peer review organizations will be instrumental in promoting this initiative. In accordance with the Secretary's quality initiative to provide Medicare and Medicaid beneficiaries and their families with user friendly quality information, we are changing the name of peer review organizations to quality improvement organizations to better reflect their responsibilities. The definition and function of these organizations will remain the same. Therefore, we are revising all references to ''peer review organization'' and ''PRO'' in chapters I, IV, and V of title 42 of the Code of Federal Regulations (CFR).

II. Provisions of the Final Rule with Comment Period

In 42 CFR chapters I, IV, and V we are revising all references to—

- ''Peer review organization'' to read ''quality improvement organization'';
- ''Peer review organizations'' to read ''quality improvement organizations'';
- ''PRO'' to read ''QIO'';
- ''PRO's'' to read ''QIO's''; and
- ''PROs'' to read ''QIOs''.

In addition, we are making the following conforming changes in § 400.200 (General definitions):

- Removing the definition of ''peer review organization'';
- Removing the definition of ''PRO'';
- Adding the definition of ''quality improvement organization''; and
- Adding the definition of ''QIO''.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and times specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule such as this take effect. We note that such a notice is not required when

applied to rules of agency organization, procedure, or practice. As this rule merely reflects the nomenclature change of an organization that contracts with the agency, no notice is required. We can also waive this procedure if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and its reasons in the rule issued. We believe it is unnecessary to undertake notice and comment rulemaking as the changes made by this regulation are technical in nature and update certain existing regulations without substantive change. There is also no impact on program costs. Therefore, for good cause, we waive prior notice and comment procedures. As indicated previously, we are, however, providing a 60-day comment period for public comment.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Orders 12866 and 13132. We have also examined the impacts of this notice according to the criteria set forth in the Unfunded Mandate Reform Act of 1995 (Public Law 104–4), the Regulatory Flexibility Act (RFA) (Public Law 96–354), and section 1102(b) of the Social Security Act.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually (major rules). We have reviewed this rule and have determined that it is not a major rule. Therefore, we are not required to perform an assessment of the costs and benefits. We have also determined that it does not otherwise constitute significant regulatory action.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million to $25 million or less annually (see 65 FR 69432). Individuals and States are not included in the definition of a small entity. We generally prepare a regulatory flexibility analysis that is consistent with the RFA unless we certify that a rule will not have a significant impact on a substantial number of small entities. We have not prepared an analysis for the RFA because we have determined, and certify, that this final rule with comment period would have no significant economic impact on small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102 (b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have not prepared an analysis for section 1102(b) of the Act because we have determined that this final rule with comment period would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandate Reform Act of 1995 also requires that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. We have determined that this final rule with comment period would not result in such an expenditure.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 400

Grant programs-health, Health facilities, Health maintenance organizations (HMOs), Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapters I, IV, and V to read as follows:

1. In 42 CFR chapters I, IV, and V revise all references to ''Peer review organization'' to read ''Quality improvement organization''; revise all references to ''Peer review organizations'' to read ''Quality improvement organizations''; revise all references to ''PRO'' to read ''QIO''; revise all references to ''PRO's'' to read ''QIO's''; and revise all references to ''PROs'' to read ''QIOs''.

2. The authority citation for part 400 continues to read as follows:

Authority: Secs 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

3. In § 400.200, remove the definitions of ''Peer review organization'' and ''PRO'' and add the definitions of ''QIO'' and ''Quality improvement organization'' in alphabetical order to read as follows:

§ 400.200 General definitions.

* * * * *

QIO stands for quality improvement organization.

* * * * *

Quality improvement organization means an organization that has a contract with CMS, under part B of title XI of the Act, to perform utilization and quality control review of the health care furnished, or to be furnished, to Medicare beneficiaries, formerly known as a peer review organization.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)
(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 12, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare and Medicaid Services.

Approved: April 5, 2002.

Tommy G. Thompson,

Secretary.

[FR Doc. 02–12242 Filed 5–23–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 051702C]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin by Vessels Using Trawl Gear in Bycatch Limitation Zone 1 of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in Bycatch Limitation Zone 1 (Zone 1) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2002 bycatch allowance of red king crab specified for the trawl yellowfin sole fishery category in Zone 1.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 21, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 red king crab bycatch allowance specified for Zone 1 of the BSAI trawl yellowfin sole fishery category, which is defined at § 679.21(e)(3)(iv)(B)(1), is 16,664 animals (67 FR 956, January 8, 2002).

In accordance with § 679.21(e)(7)(ii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2002 bycatch allowance of red king crab specified for the trawl yellowfin sole fishery in Zone 1 of the BSAI has been reached. Consequently, the Regional Administrator is closing directed fishing for yellowfin sole by vessels using trawl gear in Zone 1 of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the red king crab bycatch allowance for the trawl yellowfin sole fishery category in Zone 1 of the BSAI constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to avoid exceeding the red king crab bycatch allowance for the trawl yellowfin sole fishery category in Zone 1 of the BSAI constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 21, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–13118 Filed 5–21–02; 3:41 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 101
Friday, May 24, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710 and 1717

RIN 0572–AB68

Exceptions of RUS Operational Controls Under Section 306E of the RE Act

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: In an effort to continually look for ways to streamline requirements of borrowers and make regulations simple and direct, the Rural Utilities Service (RUS) proposes to eliminate regulations on Exceptions of RUS Operational Controls under Section 306E of the RE Act in its entirety. Because borrowers are now afforded the same exemptions from RUS operational controls by way of other provisions, RUS has determined that the regulations can now be removed.

DATES: Written comments must be received by RUS or carry a postmark or equivalent no later than June 24, 2002.

ADDRESSES: Written comments should be addressed to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. RUS requests a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Patrick R. Sarver, Management Analyst, Rural Utilities Service, Electric Program, Room 4024 South Building, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250–1560, Telephone: 202–690–2992, FAX: 202–690–0717, E-mail: psarver@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice titled ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034) advising that RUS loans and loan guarantees from coverage were not covered by Executive Order 12372.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912 (e)), administrative appeals procedures, if any are required, must be exhausted before and action against the Department or its agencies.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of RUS has determined that this rule will not have significant impact on a substantial number of small entities. The RUS electric loan program provides loans and loan guarantees to borrowers at interest rates and terms that are more favorable than those generally available from the private sector. Small entities are not subjected to any requirements, which are not applied equally to large entities. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

This rule contains no additional information collection or recordkeeping requirements under OMB control number 0572–0032 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Unfunded Mandates

This proposed rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Background

RUS currently treats the general subject of operational controls for recipients of electric loans and guarantees in three separate places, namely in RUS loan documents, in 7 CFR part 1717, subpart M, and in 7 CFR 1710.7. In the interests of eliminating confusion and to continue in its ongoing program to streamline RUS regulations, RUS is proposing to remove 7 CFR 1710.7. An understanding of how RUS treatment of operational controls evolved in the 1990's is essential to understanding this action.

In November of 1993, Congress enacted sec. 306e of the Rural

Electrification Act of 1936 (RE Act)(7 U.S.C. 936e), directing RUS to be ''guided by the practices of private lenders'' to ''minimize the approval rights, requirements and restrictions, and prohibitions that the Secretary otherwise may establish with respect to the operations'' of any electric borrower whose net worth exceeds 110 percent of the outstanding principal balance on loans made or guaranteed by RUS (Pub. L. 103–129 2(c)(7)). In December 1993, Congress made technical corrections to the act and effectively directed the Administrator to issue ''interim final regulations'' to implement sec. 306e within 180 days (Pub. L. 103–201). RUS did so on January 28, 1994 (59 FR 3982), thereby creating 7 CFR 1710.7. Members of the class of electric borrowers subject to this regulation are commonly referred to as ''110 percent borrowers.''

On December 29, 1995 (60 FR 67395), RUS published a final rule substantially revising the forms of its loan documents to extend the benefits of the treatment of 110 percent borrowers to virtually all RUS borrowers. That exercise made the most comprehensive changes to RUS loan documents in over 20 years and was guided by the practices of private lenders. Consequently, regardless of whether they were entitled to treatment as 110 percent borrowers, all borrowers using the updated forms of loan documents enjoyed their more contemporary treatment of the subject of operational controls. That treatment closely followed the treatment of 110 percent borrowers in 7 CFR 1710.7. In the same rulemaking, RUS promulgated 7 CFR part 1717, subpart M, which also treated the subject of operational controls. Subpart M was intended to manage the transition from old style loan documents to the more contemporary new forms in an orderly and equitable way. RUS was concerned that all of its borrowers would simultaneously request replacement of their existing loan documentation with the new forms. Constraints on RUS resources necessitated the phasing in of the new loan documents. RUS managed its concerns by promulgating subpart M to conform the requirements for existing loan documents to those being used in the new forms. Borrowers who have not yet replaced their loan documents with the new forms are referred to as ''legacy'' borrowers.

In the preamble to that 1995 rulemaking, RUS explained the relationship between these three separate treatments of the subject of operational controls: ''The provisions of the new mortgage and loan contract and 7 CFR part 1717, subpart M, in many cases provide greater latitude to borrowers than established originally in 7 CFR 1710.7 for 110 percent borrowers. Therefore, § 1710.7 has been revised to reflect the greater latitude provided in the new loan documents and Subpart M.''

RUS also concluded that in its ''judgement'' and citing ''prudent private lending practices,'' the further relaxation of operational controls for 110 percent borrowers was not justified beyond what was provided for every borrower in the new loan documents and in subpart M for ''legacy'' borrowers. In other words, by changing 7 CFR 1710.7 only so far as necessary to avoid the anomaly of 110 percent borrowers being subjected to more restrictive covenants under 7 CFR 1710.7 then they otherwise would have been as a typical borrower operating under the new documents and regulations, RUS made operational controls for 110 percent borrowers coextensive with the relaxed operational controls in the new loan documents and subpart M. Thus, for all intents and purposes, on December 29, 1995, the treatment of operational controls for all three categories of electric borrowers converged around the less intrusive approach adopted by the new loan documents reflecting private lending practices.

Since 1995, almost all RUS electric borrowers have executed the new loan documents. About 100 electric borrowers still have the old forms, but the distinctions in operational controls have been eliminated by subpart M. It should also be noted that every 110 percent electric borrower either now has the new form of loan documents or has ''legacy'' loan documents, which have been modified by the promulgation of subpart M. Accordingly, the subject of operational controls is now treated essentially the same way for all distribution borrowers regardless of their 110 percent borrower status. In all instances, that treatment has been guided by the practices of private lenders. Since that treatment of operational controls conforms to the requirements of sec. 306e of the RE Act, 7 CFR 1710.7 now appears to be an anachronism that no longer serves any useful purpose.

RUS notes that sec. 306e of the RE Act also treats the subject of lien accommodations and subordinations for 110 percent borrowers. Although this remains important, the subject of lien accommodations and subordinations for 110 percent borrowers is separately treated in 7 CFR 1717.860 and 7 CFR 1717.904. Although 7 CFR 1717.904 contains some cross-references to 7 CFR 1710.7(c), these appear to be merely reader's aids. Accordingly, RUS proposes to amend 7 CFR 1717.904 by eliminating paragraphs (c) and (d) thereof and redesignating the existing paragraph (e) as paragraph (c). RUS considers these changes in 7 CFR 1717.904 to be of a conforming nature and no substantive change in the existing treatment of requests for lien accommodations or subordinations by 110 percent borrowers is intended. No changes in 7 CFR 1717.860 are necessitated by the proposed action and so none are being made.

For all of the above reasons, it appears that 7 CFR 1710.7 has become an anachronism because the subsequent promulgation of new loan documents and subpart M effectively conferred the benefits of 7 CFR 1710.7 to all borrowers. Borrowers who are relying on subpart M are encouraged to switch to the new forms of loan documents so that subpart M itself can eventually be removed at a later date once the universe of legacy borrowers has sufficiently contracted to the point that any remaining legacy borrowers could be dealt with either informally or on a case-by-case basis. RUS does not believe this proposed action will diminish or abrogate any rights or privileges conferred upon 110 percent borrowers by sec. 306e of the RE Act, and no such consequences are intended.

List of Subjects

7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric power rates, Electric utilities, Intergovernmental relations, Investments, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, chapter X of title 7 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart A—General

§ 1710.7 [Removed and Reserved]

2. Section 1710.7 is removed and reserved.

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

3. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart S—Lien Accommodations for Supplemental Financing Required by 7 CFR 1710.110

§ 1717.904 [Amended]

4. Section 1717.904 is amended by removing paragraphs (c) and (d) and redesignating paragraph (e) as paragraph (c).

Dated: May 20, 2002.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 02–13102 Filed 5–23–02; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

Regulation A; Docket No. R–1123

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board of Governors is publishing for comment a proposed amendment to Regulation A that would replace the existing adjustment and extended credit programs with new discount window programs called primary credit and secondary credit, respectively. This proposed restructuring of Federal Reserve credit programs is designed to improve the functioning of the discount window and does not represent a change in the stance of monetary policy. The proposed rule also would reorganize and streamline existing provisions of Regulation A. The Board solicits comment on all aspects of the proposal.

DATES: Comments on the proposed rule must be received not later than August 22, 2002.

ADDRESSES: Comments should refer to docket number R–1123 and should be sent to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC, 20551 or mailed electronically to *regs.comments@federalreserve.gov.* Comments addressed to Ms. Johnson also may be delivered between 8:45 a.m. and 5:15 p.m. to the Board's mail facility in the west courtyard of the Eccles Building, located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in accordance with the Board's Rules Regarding the Availability of Information (12 CFR part 261) in Room MP–500 of the Martin Building on weekdays between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Brian Madigan, Deputy Director (202/452–3828) or William Nelson, Senior Economist (202/452–3579), Division of Monetary Affairs; or Stephanie Martin, Assistant General Counsel (202/452–3198) or Adrianne Threatt, Senior Attorney (202/452–3554), Legal Division; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

Background

Current Credit Programs of Reserve Banks and Their Relationship to Monetary Policy and Open Market Operations

Under existing Regulation A, the Reserve Banks may make credit available to depository institutions at the discount window by making advances secured by acceptable collateral or by discounting paper that meets the requirements of the Federal Reserve Act. Reserve Bank credit usually takes the form of an advance.

Reserve Banks make credit available at the discount window through three credit programs: adjustment credit, seasonal credit, and extended credit. Adjustment credit is available for short periods of time at a basic discount rate that, over the past decade, typically has been 25 to 50 basis points below the market rates that apply to overnight loans, as indexed by the federal funds rate. Reserve Banks also extend seasonal credit for longer periods than permitted under the adjustment credit program to help smaller depository institutions meet funding needs that result from expected patterns in their deposits and loans. Finally, Reserve Banks may provide extended credit to depository institutions where similar assistance is not reasonably available from other sources. The rates applied to seasonal and extended credit are at or above the basic discount rate.

When implementing monetary policy, the Federal Reserve relies primarily on open market operations to supply reserves to the banking system and currency to the public and to make short-run adjustments in reserves. However, lending to depository institutions through the discount window aids the Federal Reserve's open market operations in two important ways. First, discount window lending provides additional reserves to the overall banking system when the supply of reserves provided through open market operations falls short of demand. Second, discount window lending provides a temporary source of reserves and funding to financially sound individual depository institutions that have experienced an unexpected shortfall in reserves or funding. Discount window credit permits such an institution to make payments without incurring an overdraft in its Federal Reserve account or failing to meet its reserve requirements. Historically the Federal Reserve System has relied on the adjustment credit program to accomplish these two objectives.

The discount window also can, at times, serve as a useful tool for promoting financial stability by providing temporary funding to depository institutions that are experiencing significant financial difficulties. The provision of credit to a troubled depository institution can help to prevent the sudden collapse of the institution by easing liquidity strains while the institution is making a transition to more sound footing, or by facilitating an orderly closure of the institution. An institution obtaining credit in such a situation must be monitored appropriately to ensure that it does not take excessive risks in an attempt to return to profitability and does not use central bank credit in a manner that would increase costs to the deposit insurance fund of resolving the institution if resolution were to become necessary. Historically, the Federal Reserve System has relied on extended credit to aid depository institutions experiencing significant financial difficulties.

The Rationale for Changing the Basic Framework Through Which Reserve Banks Extend Credit

A below-market discount rate creates incentives for institutions to obtain adjustment credit to exploit the spread between the discount rate and the market rates for short-term loans. Regulation A therefore provides that a Reserve Bank cannot extend adjustment credit to a depository institution until

the institution exhausts other sources of funds. Regulation A also provides that recipients may not use adjustment credit to finance sales of federal funds.

Because of the restrictions necessitated by a below-market discount rate, a substantial degree of Reserve Bank administration is associated with adjustment credit. In particular, the Reserve Bank may need to review each prospective borrower's funding situation to establish that the borrower has exhausted other reasonably available sources of funds and that the reason for borrowing is appropriate. Because that evaluation necessarily is subjective, achieving a reasonable degree of consistency in credit administration across the System is difficult.

The administration of and restrictions on discount window credit create a burden on depository institutions that reduces their willingness to seek credit at the discount window. In addition, the rules governing discount window credit have proved difficult to explain, and depository institutions often have cited uncertainty about their borrowing privileges as a disincentive to seek credit. Depository institutions also have expressed concern about the requirement that borrowers fully utilize other sources of funds before borrowing adjustment credit. Institutions have expressed concern that turning to the window after signaling in the market their need for funds could be interpreted as a sign of weakness, particularly during periods of financial stress. Concerns such as these have limited the willingness of depository institutions to borrow at the discount window, even in circumstances of extremely tight money markets where such borrowing would have been appropriate. The reluctance to borrow in turn has limited the discount window's effectiveness in buffering shocks to money markets.

In light of the drawbacks associated with the current below-market discount window programs, the Board believes that the interests of depository institutions, the Federal Reserve System, and the economy more generally would be served more effectively by an above-market lending program. Under the Board's proposed rule, Reserve Banks would extend credit under the primary credit program to institutions the Reserve Banks determine to be generally sound. Primary credit usually would be extended at an above-market rate, which should essentially eliminate the incentive for institutions to seek discount window credit simply to exploit the usual spread between the discount rate and short-term market rates. Eliminating this incentive would reduce sharply the need for administration regarding the extension and use of Federal Reserve credit. The streamlined eligibility criteria also should encourage greater uniformity in administration of the discount window across Federal Reserve districts. By minimizing a Reserve Bank's need to question potential borrowers, not requiring that an institution first attempt to borrow elsewhere, making the borrowing program significantly more transparent, and limiting extensions of primary credit to generally sound financial institutions, the proposed above-market lending program should reduce depository institutions' reluctance to borrow when money markets tighten sharply. As a result, the discount window should become a more effective policy instrument.

The Board reiterates that replacing the current below-market adjustment credit program with an above-market program would not signal a shift in the stance of monetary policy. Rather, the proposed changes represent a broad structural change that should enable the discount window to operate more efficiently as a source of funds for individual depository institutions and as a mechanism for implementing the policy objectives of the Federal Reserve System. The proposed structure of providing credit at the margin at above-market interest rates also would be similar to mechanisms adopted by other major central banks.

Section-by-Section Analysis

The Proposed Changes to the Discount Lending Framework—§§ 201.4 and 201.51

The Board proposes to replace the adjustment credit with a new lending program called primary credit and the extended credit program with a new program known as secondary credit. Although the proposed regulation retains the seasonal credit program with minor revisions, as discussed in more detail below the Board specifically requests comment on whether a seasonal credit program remains necessary and, if so, whether the interest rate on seasonal credit would more appropriately be set at the primary discount rate. As required by the Federal Reserve Act, all advances made under the proposed discount lending programs would have to be adequately collateralized. The Reserve Banks' collateral policies would be unchanged and they would continue to accept a broad range of financial assets as collateral for discount window loans.

The substantive changes to the lending programs are contained in § 201.4 of the proposed rule, which replaces existing § 201.3. The rates that apply to the proposed lending programs are described in § 201.51, which combines and replaces existing §§ 201.51–201.52.

Primary Credit

Primary credit would replace adjustment credit, would be extended on a very short-term basis (usually overnight) at an above-market rate, and ordinarily would be available to generally sound depository institutions with little or no administrative burden on the borrower or the Reserve Banks. A Reserve Bank also could extend primary credit with maturities up to a few weeks to a depository institution if the Reserve Bank finds that the institution is in generally sound condition and cannot obtain such credit in the market on reasonable terms. The Board expects that institutions receiving longer-term primary credit would be relatively small institutions that lack access to national money markets.

Although the primary credit program is designed to make short-term credit available as a backup source of liquidity to generally sound institutions, a Reserve Bank is not obligated to extend primary credit. A Reserve Bank therefore may choose not to lend to a generally sound depository institution if the Reserve Bank determines that doing so would be inconsistent with the purposes of the primary credit program.

Section 201.4(a) of the proposed rule describes the primary credit program, and § 201.51(a) sets forth the rate that applies to primary credit.

1. Interest Rate Applicable to Primary Credit

The interest rate on primary credit ordinarily would be above short-term market interest rates, including the target federal funds rate, and would be set by the boards of directors of the Reserve Banks subject to review and determination by the Board of Governors. A substantial spread between the discount and market rates would encourage depository institutions to use primary credit only to meet short-term, unforeseen needs. If the spread were too wide, however, the primary discount rate would not cap the federal funds rate at a reasonable level above the rate targeted by the Federal Open Market Committee (FOMC).

The Board proposes to recommend that the boards of directors of the Reserve Banks, subject to the Board's review and determination, initially establish a primary discount rate that is

100 basis points above the FOMC's then-prevailing target for the federal funds rate. A spread of 100 basis points would be similar to the spreads employed by other central banks and likely would place the primary discount rate somewhat above the alternative cost of overnight funds for eligible depository institutions. The Board believes that public comment could help inform the Federal Reserve System's choice of the initial spread between the federal funds and discount rates and assist the boards of directors of the Reserve Banks when they establish rates subsequently. The Board therefore specifically solicits comment regarding the interest rate spread.

After establishment of the initial primary discount rate, the Federal Reserve System would change that rate through a process identical to the existing discretionary procedure for changing the basic discount rate. The boards of directors of the Federal Reserve Banks would establish a primary discount rate and other discount rates every two weeks subject to review and determination by the Board of Governors, as required by the Federal Reserve Act. The primary discount rate presumably would move broadly in line with the target federal funds rate, much as the basic discount rate does currently.

2. Eligibility for Primary Credit

Under the proposed regulation, only depository institutions deemed generally sound in the judgment of the Reserve Bank would be eligible to obtain primary credit. Reserve Banks would classify depository institutions with borrowing agreements already on file as either eligible or ineligible for primary credit before a primary credit program takes effect and would notify each such institution of its status. A new applicant for Federal Reserve credit would be notified of its eligibility after filing borrowing documents with the appropriate Federal Reserve Bank. The Reserve Banks would notify an institution promptly of any change in the institution's eligibility status. An institution's eligibility status, which would be based in part on that institution's confidential supervisory and examination information, would be considered confidential information and the Federal Reserve System would handle it accordingly.

The Board expects that the Reserve Banks would adopt on a System-wide basis uniform guidelines for judging the degree of an institution's financial soundness and thus its eligibility for primary credit. The Board envisions that the guidelines for determining eligibility would be based primarily on supervisory ratings, but supplementary information, such as ratings issued by major rating agencies, spreads on subordinated debt, and information from supervisory exams in progress, also would be considered. The Board further expects that the majority of depository institutions would be eligible for the primary credit program under such guidelines.

The Board anticipates that Reserve Banks initially would adopt guidelines under which domestically chartered depository institutions with composite CAMELS ratings of 1 or 2 and U.S. branches and agencies of foreign banking organizations with Strength of Support Assessment (SOSA) composite rankings of 1 would be eligible for primary credit, unless supplementary information suggested that the financial condition of the depository institution had deteriorated since the most recent exam. Similarly, the Board expects that under the initial guidelines institutions rated CAMELS 3 or SOSA 2 would be eligible for primary credit if supplementary information suggested that they were generally sound. However, the funding situation of such institutions seeking credit would be reviewed and monitored more closely than that of stronger institutions. The Board expects that institutions rated CAMELS 4 or SOSA 3 would be ineligible for primary credit except in rare circumstances, such as an ongoing examination that indicated a substantial improvement in condition. The Board further anticipates that institutions rated CAMELS 5 would in no case be eligible for primary credit and could obtain only secondary credit.

Because lending to troubled institutions would be subject to careful monitoring, the expected eligibility criteria would be consistent with the intent of the guidelines for discount window lending included in section 10B(b) of the Federal Reserve Act, as added by the Federal Deposit Insurance Corporation Improvement Act. The criteria also would be consistent with the guidelines used by Federal Reserve Banks to determine institutions' access to daylight credit in the Payments System Risk policy. In general, the depository institutions that qualify for access to daylight credit would qualify for primary credit, and those that would not qualify for daylight credit would be restricted to secondary credit.

A depository institution that meets the eligibility criteria adopted by the Reserve Banks would not be required to exhaust other reasonable available sources of funds before obtaining primary credit. The removal of this requirement is consistent with the overall reduction in discount window administration under the proposed new discount window structure. In addition, depository institutions that receive primary credit would be free to sell federal funds to others. This would enhance the ability of the primary credit rate to serve as a cap on the federal funds rate when money markets tighten. The Board would encourage financially sound institutions to use primary credit to fund sales of federal funds if such transactions were in their financial interest.

3. Benefits of a Primary Credit Program

Because of the reduced administration and corresponding reduction in the reluctance of depository institutions to borrow, the Board expects that primary credit would serve as a more effective safety valve for the banking system and a backup source of liquidity for individual depository institutions that are financially sound.

The proposal to adopt a primary credit program also is an aspect of the Federal Reserve's ongoing planning for contingencies. The Federal Reserve System expects to establish special procedures through which the System could lower discount rates quickly in an emergency. If, as the Board intends, the availability of primary credit significantly reduces the reluctance of depository institutions to use the discount window, the System should be able to cap the federal funds rate near the target during a crisis by reducing the primary discount rate to a level close to the federal funds target rate. During a financial market crisis, the proposed discount window structure therefore would provide a means of preventing an undue tightening of money markets if depository institutions' demands for excess reserves rose sharply, if disruptions inhibited the flow of funds through the banking system, or if the Federal Reserve's ability to carry out open market operations were impaired.

In addition, the Board expects that moving to an above-market primary credit program would be beneficial to the Federal Reserve System as the mechanisms by which the Board implements monetary policy evolve. For example, if Congress authorizes the Federal Reserve Banks to pay interest on reserve balances, an above-market lending program would allow the Reserve Banks to avoid lending to depository institutions at a below-market rate while paying interest to those institutions at a market-related rate. Also, if the level of required operating balances resumes the substantial downward decline

experienced for much of the last decade, a lending program with appreciably less administration could enhance the day-to-day implementation of monetary policy. A decline in operating balances could lead to increased volatility in the federal funds rate, and the availability of reserves from an above-market lending facility would serve to limit the increase in volatility.

Secondary Credit

Secondary credit would replace extended credit and would be available to depository institutions that do not qualify for primary credit. Because some institutions that currently are eligible for adjustment credit would not qualify for primary credit, secondary credit potentially would be used more often than has the extended credit program. The text of the proposed regulation therefore seeks to eliminate the focus on longer-term credit extensions in the existing extended credit program and to recognize the somewhat broader class of borrowing situations that a Reserve Bank may handle under the secondary credit program.

Section 201.4(b) of the proposed rule describes the secondary credit program, and § 201.51(b) describes the interest rate that applies to secondary credit.

Under the proposal, Federal Reserve Banks may extend secondary credit to meet temporary funding needs of an institution if such a credit extension would be consistent with the institution's timely return to a reliance on market funding sources. A Reserve Bank also may extend secondary credit if it determines that such credit would facilitate the orderly resolution of serious financial difficulties of the borrowing institution. When extending secondary credit to an undercapitalized or critically undercapitalized depository institution, a Reserve Bank also must observe the requirements set forth at proposed § 201.5. The interest rate on secondary credit would be set by formula 50 basis points above the primary discount rate. This higher rate reflects the less-sound condition of borrowers of secondary credit.

Seasonal Credit

Section 201.4 of the proposed rule makes only minor revisions to the existing seasonal credit provisions of Regulation A. The seasonal credit interest rate is based on short-term market rates, and historical interest rate relationships suggest that the rate for seasonal credit usually will be below the primary credit rate. Sections 201.4 and 201.51(c) of the proposed rule, which discuss the rate applicable to seasonal credit, would not contain existing language requiring the seasonal credit rate to be at least as high as the primary credit rate. In addition, the System for some time has not required that a seasonal credit borrower demonstrate that it could not obtain similar assistance from special industry lenders, and the proposed rule accordingly deletes this requirement.

The seasonal credit program originally was designed to address the difficulties that relatively small banks with substantial intra-yearly swings in funding needs faced because of a lack of access to the national money markets. Reserve Banks traditionally have extended seasonal credit to small institutions that demonstrate significant seasonal swings in their loans and deposits. However, funding opportunities for smaller depository institutions appear to have expanded significantly over the past few decades as a result of deposit deregulation and the general development of financial markets. The Board therefore specifically solicits comment on whether small depository institutions still lack reasonable access to funding markets; on the desirability of eliminating the seasonal lending program; and on the appropriate setting of the seasonal lending rate, particularly in view of the proposed establishment of a primary credit program with an above-market rate. Depending on the comments received, the Board may decide to adjust the rate applicable to seasonal credit or to eliminate the seasonal credit program altogether.

Reorganization of and Proposed Changes to Other Provisions of Regulation A

In addition to replacing the adjustment and extended credit programs with primary and secondary credit programs, respectively, the Board also proposes to reorganize much of existing Regulation A in order to streamline the text of the rule and make it easier to read and understand. In addition, the Board proposes to delete certain provisions of existing Regulation A that are obsolete or superfluous.

Deletion of Provisions Concerning the Century Date Change Special Liquidity Facility (SLF)

The Board previously amended Regulation A so that depository institutions would have access to an SLF from October 1, 1999, to April 7, 2000, to ease liquidity pressures unique to the century date change period. The SLF for U.S. depository institutions is described at existing § 201.3(e), and the circumstances under which a U.S. branch or agency of a foreign bank could use the facility are described at existing § 201.7(b). Sections 201.2(j)–(k) define two terms—''eligible institution'' and ''targeted federal funds rate,'' respectively—that pertain only to the SLF provisions. Because the SLF is no longer in effect, the Board proposes to delete each of the four provisions discussed above. As discussed in more detail in connection with proposed § 201.3(d), the Board proposes to delete a portion of existing § 201.6(d) that allows a depository institution to use credit obtained from the SLF to fund sales of federal funds.

Section 201.1 Authority, Purpose and Scope

The Board proposes to amend the existing authority citations at § 201.1(a) to include sections 11(i)–11(j) and 14(d) of the Federal Reserve Act. Sections 11(i)–(j) provide the Board with rulemaking authority and general supervisory authority over the Reserve Banks, respectively, and section 14(d) authorizes the Reserve Banks, subject to the review and determination of the Board, to establish discount rates.

As in the existing regulation, § 201.1(b) of the proposed rule describes the purpose and scope of the Regulation A and states that the regulation governs lending by Reserve Banks to depository institutions and others. To gather all the provisions concerning the scope of Regulation A into one section, the proposed rule incorporates language from existing § 201.7(a) regarding the circumstances under which U.S. branches and agencies of foreign banks are subject to the regulation.

Section 201.2—Definitions

This section would remain unchanged except for the deletion of five definitions. As discussed above, §§ 201.2(j)–(k) contain definitions that are unnecessary because they relate only to the SLF. The other three terms the Board proposes to delete are liquidation loss, increased loss, and excess loss, found at existing §§ 201.2(d)–(f), respectively.

Liquidation loss and increased loss are used to derive the term excess loss, which is the amount the Board would owe the FDIC under section 10B(b) of the Federal Reserve Act if outstanding Reserve Bank advances to a critically undercapitalized depository institution increased the FDIC's cost of liquidating that institution. Excess loss, the only one of these three terms used elsewhere in the regulation, appears in existing § 201.4(c). That section states that the Board would assess a Reserve Bank for any excess loss attributable to advances made by that Reserve Bank and

discusses the procedure by which the Board would calculate the amount to be assessed.

The Board believes the regulation would be less cumbersome but no less accurate if the assessment section incorporated the concept of excess loss by simply cross-referencing section 10B(b) of the Federal Reserve Act. Although the existing definitions explain accurately and in detail how the Board would calculate the excess loss, they produce the same result required by section 10B(b) of the statute.

Section 201.3 General Requirements Governing Extensions of Credit

This section would prescribe the Board's rules governing a Federal Reserve Bank's extension of credit. This section would permit Federal Reserve Banks to extend credit in the form of an advance or discount and would discuss requirements that both the Reserve Banks and the depository institutions receiving credit must observe. The text of proposed § 201.3 combines in one place all the existing provisions of Regulation A that relate to each of these topics.

Proposed paragraph (a) of § 201.3 would consolidate all the existing provisions of Regulation A concerning a Reserve Bank's authority to extend credit. Proposed § 201.3(a) mostly contains existing text from § 201.5 and provides that a Reserve Bank may extend credit to a depository institution in the form of an advance or a discount of certain types of paper described in the Federal Reserve Act. Like existing § 201.5, the proposed section states that credit to depository institutions generally will take the form of an advance but preserves a Reserve Bank's discretion to lend through discounting eligible paper if the Reserve Bank determines that a discount would be more appropriate for a particular depository institution. The proposed rule would delete existing § 201.8, which provides that a Reserve Bank may discount paper for an institution that is part of the farm credit system, and instead would discuss that authority at proposed § 201.3(a)(3). Rather than providing the lengthy discussion at existing § 201.8, proposed § 201.3(a)(3) simply cross-references section 13A of the Federal Reserve Act, which authorizes Reserve Banks to discount paper for such institutions.

Proposed § 201.3(b) contains the text of existing § 201.9, which states that a Reserve Bank has no obligation to make, increase, renew, or extend any advance or discount to a depository institution.

Proposed § 201.3(c) gathers in one place the existing provisions of Regulation A concerning the requirements a Reserve Bank must observe when it does extend credit. Section 201.3(c)(1) contains text from existing § 201.4(d) providing that a Reserve Bank should ascertain whether an institution is undercapitalized or critically undercapitalized before extending credit to that institution. This section adds text stating that, if the institution is undercapitalized or critically undercapitalized, the Reserve Bank must follow special lending procedures. These procedures are specified in proposed § 201.5, which contains the text of current § 201.4 and is discussed in more detail below.

Proposed §§ 201.3(c)(2)–(3) include text from existing §§ 201.6(b)–(c) regarding a Reserve Bank's duty to require any information it deems appropriate to ensure the acceptability of assets tendered as collateral or for discount, to ensure that credit is used consistent with Regulation A, and to keep itself informed of the general character and amount of loans and investments of a depository institution as required by section 4(8) of the Federal Reserve Act.

Proposed § 201.3(d) consists of existing § 201.6(d), with revisions, regarding how a depository institution may use Federal Reserve credit. In existing Regulation A, only depository institutions that received credit under the century date change SLF were permitted to use Federal Reserve credit to fund sales of federal funds without permission of the Reserve Bank extending the credit. Because the SLF no longer is in effect, the Board would delete the language that pertains to credit obtained through that facility. Instead, as explained more fully above in the section discussing primary credit, proposed § 201.3(d) would permit an institution that receives primary credit to use that credit to fund sales of federal funds without Reserve Bank permission. Recipients of secondary or seasonal credit would continue to need Reserve Bank permission to use Reserve Bank credit to fund sales of federal funds.

The Board proposes to delete existing § 201.6(a), which provides that a depository institution may not use Federal Reserve credit as a substitute for capital. Although the Board continues to believe this to be an appropriate policy, the Board believes that other provisions of the statutes and regulations that it administers address this issue. Thus, the Board sees no need to retain this provision in Regulation A.

Section 201.5 Limitations on Availability and Assessments

The existing text of § 201.4 would be redesignated as § 201.5, with technical revisions. This section incorporates the limitations on advances to an undercapitalized or critically undercapitalized depository institution set forth in section 10B(b) of the Federal Reserve Act and also applies those limitations to discounts for such institutions. In addition, § 201.5 discusses section 10B(b)'s requirement that the Board pay a specified amount to the FDIC if a Reserve Bank advance to a critically undercapitalized depository institution increases the loss the FDIC incurs when liquidating that institution. The existing regulation explains in detail through the definitions of ''liquidation loss,'' ''increased loss,'' and ''excess loss'' how the Board would calculate that amount. The proposed rule, by contrast, would delete these three definitions and simply provide that the Board will assess the Federal Reserve Banks for any amount the Board pays to the FDIC in accordance with section 10B(b) of the Federal Reserve Act.

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)) the Board must publish an initial regulatory flexibility analysis with this proposed regulation. As discussed above, the proposed above-market discount rate structure is designed to enable the discount window to operate more efficiently as a back-up source of funds for individual depository institutions and as a mechanism for implementing the policy objectives of the Federal Reserve System. By limiting primary credit eligibility to generally sound institutions, minimizing a Reserve Bank's need to question potential borrowers, and making the borrowing programs more transparent, the proposal seeks to eliminate current disincentives for depository institutions to seek Federal Reserve credit when money markets tighten. The Board knows of no other regulations that overlap or conflict with, or duplicate, the proposed rule.

The proposed rule would apply to all depository institutions that are eligible to borrow at the discount window, including approximately 16,000 small depository institutions, and would not add any recordkeeping, reporting, or compliance requirements associated with discount window borrowing. The requirements of the proposed rule would be the same for all depository institutions regardless of their size.

However, if the Board altered the seasonal credit program in response to public comments, small depository institutions, which are the primary users of that program, would be affected more than larger institutions. Because the Board estimates that fewer than 5 percent of eligible small depository institutions typically receive seasonal credit each year, the Board does not expect changes to or elimination of the seasonal credit program to have a large impact in the aggregate.

The Board solicits comment on the likely impact the proposed rule would have on depository institutions, including those that are small business concerns. The Board particularly is interested in the public's view on how the increase in the discount rate relative to money market interest rates and the corresponding reduction in administrative burden would affect depository institutions of different sizes.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. The proposed rule contains no new collections of information and proposes no substantive changes to existing collections of information pursuant to the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 201

Credits.

For the reasons set forth in the preamble, the Board revises part 201 of subchapter A of Chapter II, Title 12 of the Code of Federal Regulations to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

Sec.

Authority: 12 U.S.C. 248(i)–(j), 347a, 347b, 343 *et seq.*, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

§ 201.1 Authority, purpose and scope.

(a) *Authority.* This part is issued under the authority of sections 10A, 10B, 11(i), 11(j), 13, 13A, 14(d), and 19 of the Federal Reserve Act (12 U.S.C. 248(i)–(j), 347a, 347b, 343 *et seq.*, 347c, 348 *et seq.*, 357, 374, 374a, and 461).

(b) *Purpose and scope.* This part establishes rules under which a Federal Reserve Bank may extend credit to depository institutions and others. Except as otherwise provided, this part applies to United States branches and agencies of foreign banks that are subject to reserve requirements under Regulation D (12 CFR part 204) in the same manner and to the same extent as this part applies to depository institutions. The Federal Reserve System extends credit with due regard to the basic objectives of monetary policy and the maintenance of a sound and orderly financial system.

§ 201.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Appropriate federal banking agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1813(q)).

(b) *Critically undercapitalized insured depository institution* means any insured depository institution as defined in section 3 of the FDI Act (12 U.S.C. 1813(c)(2)) that is deemed to be critically undercapitalized under section 38 of the FDI Act (12 U.S.C. 1831o(b)(1)(E)) and its implementing regulations.

(c)(1) *Depository institution* means an institution that maintains reservable transaction accounts or nonpersonal time deposits and is:

(i) An *insured bank* as defined in section 3 of the FDI Act (12 U.S.C. 1813(h)) or a bank that is eligible to make application to become an insured bank under section 5 of such act (12 U.S.C. 1815);

(ii) A *mutual savings bank* as defined in section 3 of the FDI Act (12 U.S.C. 1813(f)) or a bank that is eligible to make application to become an insured bank under section 5 of such act (12 U.S.C. 1815);

(iii) A *savings bank* as defined in section 3 of the FDI Act (12 U.S.C. 1813(g)) or a bank that is eligible to make application to become an insured bank under section 5 of such act (12 U.S.C. 1815);

(iv) An *insured credit union* as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752(7)) or a credit union that is eligible to make application to become an insured credit union pursuant to section 201 of such act (12 U.S.C. 1781);

(v) A *member* as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422(4)); or

(vi) A *savings association* as defined in section 3 of the FDI Act (12 U.S.C. 1813(b)) that is an insured depository institution as defined in section 3 of the act (12 U.S.C. 1813(c)(2)) or is eligible to apply to become an insured depository institution under section 5 of the act (12 U.S.C. 15(a)).

(2) The term ''*depository institution*'' does not include a financial institution that is not required to maintain reserves under § 204.1(c)(4) of Regulation D (12 CFR 204.1(c)(4)) because it is organized solely to do business with other financial institutions, is owned primarily by the financial institutions with which it does business, and does not do business with the general public.

(d) *Transaction account* and *nonpersonal time deposit* have the meanings specified in Regulation D (12 CFR part 204).

(e) *Undercapitalized insured depository institution* means any insured depository institution as defined in section 3 of the FDI Act (12 U.S.C. 1813(c)(2)) that:

(1) Is not a critically undercapitalized insured depository institution; and

(2)(i) Is deemed to be undercapitalized under section 38 of the FDI Act (12 U.S.C. 1831o(b)(1)(C)) and its implementing regulations; or

(ii) Has received from its appropriate federal banking agency a composite CAMELS rating of 5 under the Uniform Financial Institutions Rating System (or an equivalent rating by its appropriate federal banking agency under a comparable rating system) as of the most recent examination of such institution.

(f) *Viable,* with respect to a depository institution, means that the Board of Governors or the appropriate federal banking agency has determined, giving due regard to the economic conditions and circumstances in the market in which the institution operates, that the institution is not critically undercapitalized, is not expected to become critically undercapitalized, and is not expected to be placed in conservatorship or receivership. Although there are a number of criteria that may be used to determine viability, the Board of Governors believes that ordinarily an undercapitalized insured depository institution is viable if the appropriate federal banking agency has accepted a capital restoration plan for the depository institution under 12 U.S.C. 1831o(e)(2) and the depository institution is complying with that plan.

§ 201.3 Extensions of credit generally.

(a) *Advances to and discounts for a depository institution.* (1) A Federal Reserve Bank may lend to a depository institution either by making an advance secured by acceptable collateral under § 201.4 of this part or by discounting certain types of paper. A Federal

Reserve Bank generally extends credit by making an advance.

(2) An advance to a depository institution must be secured to the satisfaction of the Federal Reserve Bank that makes the advance. Satisfactory collateral generally includes United States government and federal-agency securities, and, if of acceptable quality, mortgage notes covering one-to four-family residences, state and local government securities, and business, consumer, and other customer notes.

(3) If a Federal Reserve Bank concludes that a discount would meet the needs of a depository institution or an institution described in section 13A of the Federal Reserve Act (12 U.S.C. 349) more effectively, the Reserve Bank may discount any paper indorsed by the institution, provided the paper meets the requirements specified in the Federal Reserve Act.

(b) *No obligation to make advances or discounts.* A Federal Reserve Bank shall have no obligation to make, increase, renew, or extend any advance or discount to any depository institution.

(c) *Information requirements.* (1) Before extending credit to a depository institution, a Federal Reserve Bank should determine if the institution is an undercapitalized insured depository institution or a critically undercapitalized insured depository institution and, if so, follow the lending procedures specified in § 201.5.

(2) Each Federal Reserve Bank shall require any information it believes appropriate or desirable to ensure that assets tendered as collateral for advances or for discount are acceptable and that the borrower uses the credit provided in a manner consistent with this part.

(3) Each Federal Reserve Bank shall:

(i) Keep itself informed of the general character and amount of the loans and investments of a depository institution as provided in section 4(8) of the Federal Reserve Act (12 U.S.C. 301); and

(ii) Consider such information in determining whether to extend credit.

(d) *Indirect credit for others.* Except for depository institutions that receive primary credit as described in § 201.4(a), no depository institution shall act as the medium or agent of another depository institution in receiving Federal Reserve credit except with the permission of the Federal Reserve Bank extending credit.

§ 201.4 Availability and terms of credit.

(a) *Primary credit.* A Federal Reserve Bank may extend primary credit on a very short-term basis, usually overnight, to a depository institution that is in generally sound condition in the judgment of the Reserve Bank. Such primary credit ordinarily is extended with minimal administrative burden on the borrowing institution. A Federal Reserve Bank also may extend primary credit with maturities up to a few weeks to a depository institution if the Reserve Bank determines that the institution is in generally sound condition and that the institution cannot obtain such credit in the market on reasonable terms. Credit extended under the primary credit program is granted at the primary discount rate.

(b) *Secondary credit.* A Federal Reserve Bank may extend secondary credit to meet temporary funding needs of a depository institution that is not eligible for primary credit if, in the judgment of the Reserve Bank, such a credit extension would be consistent with the institution's timely return to a reliance on market funding sources. A Reserve Bank also may extend secondary credit if the Reserve Bank determines that such credit would facilitate the orderly resolution of serious financial difficulties of a depository institution. Credit extended under the secondary credit program is granted at a rate above the primary discount rate.

(c) *Seasonal credit.* A Federal Reserve Bank may extend seasonal credit for periods longer than those permitted under primary credit to assist a smaller depository institution in meeting regular needs for funds arising from expected patterns of movement in its deposits and loans. An interest rate that varies with the level of short-term market interest rates is applied to seasonal credit.

(1) A Federal Reserve Bank may extend seasonal credit only if:

(i) The depository institution's seasonal needs exceed a threshold that the institution is expected to meet from other sources of liquidity (this threshold is calculated as a certain percentage, established by the Board of Governors, of the institution's average total deposits in the preceding calendar year); and

(ii) The Federal Reserve Bank is satisfied that the institution's qualifying need for funds is seasonal and will persist for at least four weeks.

(2) The Board may establish special terms for seasonal credit when depository institutions are experiencing unusual seasonal demands for credit in a period of liquidity strain.

(d) *Emergency credit for others.* In unusual and exigent circumstances and after consultation with the Board of Governors, a Federal Reserve Bank may extend credit to an individual, partnership, or corporation that is not a depository institution if, in the judgment of the Federal Reserve Bank, credit is not available from other sources and failure to obtain such credit would adversely affect the economy. If the collateral used to secure emergency credit consists of assets other than obligations of, or fully guaranteed as to principal and interest by, the United States or an agency thereof, credit must be in the form of a discount and five or more members of the Board of Governors must affirmatively vote to authorize the discount prior to the extension of credit. Emergency credit will be extended at a rate above the highest rate in effect for advances to depository institutions.

§ 201.5 Limitations on availability and assessments.

(a) *Lending to undercapitalized insured depository institutions.* A Federal Reserve Bank may make or have outstanding advances to or discounts for a depository institution that it knows to be an undercapitalized insured depository institution, only:

(1) If, in any 120-day period, advances or discounts from any Federal Reserve Bank to that depository institution are not outstanding for more than 60 days during which the institution is an undercapitalized insured depository institution; or

(2) During the 60 calendar days after the receipt of a written certification from the chairman of the Board of Governors or the head of the appropriate federal banking agency that the borrowing depository institution is viable; or

(3) After consultation with the Board of Governors. In unusual circumstances, when prior consultation with the Board is not possible, a Federal Reserve Bank should consult with the Board as soon as possible after extending credit that requires consultation under this paragraph (a).

(b) *Lending to critically undercapitalized insured depository institutions.* A Federal Reserve Bank may make or have outstanding advances to or discounts for a depository institution that it knows to be a critically undercapitalized insured depository institution only:

(1) During the 5-day period beginning on the date the institution became a critically undercapitalized insured depository institution; or

(2) After consultation with the Board of Governors. In unusual circumstances, when prior consultation with the Board is not possible, a Federal Reserve Bank should consult with the Board as soon as possible after extending credit that requires consultation under this paragraph (b).

(c) *Assessments.* The Board of Governors will assess the Federal Reserve Banks for any amount that the Board pays to the FDIC due to any excess loss in accordance with section 10B(b) of the Federal Reserve Act (12 U.S.C. 347b(b)). Each Federal Reserve Bank shall be assessed that portion of the amount that the Board of Governors pays to the FDIC that is attributable to an extension of credit by that Federal Reserve Bank, up to 1 percent of its capital as reported at the beginning of the calendar year in which the assessment is made. The Board of Governors will assess all of the Federal Reserve Banks for the remainder of the amount it pays to the FDIC in the ratio that the capital of each Federal Reserve Bank bears to the total capital of all Federal Reserve Banks at the beginning of the calendar year in which the assessment is made, provided, however, that if any assessment exceeds 50 percent of the total capital and surplus of all Federal Reserve Banks, whether to distribute the excess over such 50 percent shall be made at the discretion of the Board of Governors.

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.

(a) *Primary credit.* The rates for primary credit provided to depository institutions under § 201.4(a) are: [The chart will appear in the final rule.]

(b) *Secondary credit.* An interest rate 50 basis points above the rate for primary credit in § 201.51 will apply to secondary credit extended to depository institutions under § 201.4(c).

(c) *Seasonal credit.* The rate for seasonal credit extended to depository institutions under § 201.4(b) is a flexible rate that takes into account rates on market sources of funds.

By order of the Board of Governors of the Federal Reserve System, May 16, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–12781 Filed 5–23–02; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 303

Rules and Regulations Under the Textile Fiber Products Identification Act

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (''Commission'') solicits comments on whether to amend Rule 7(m) of the Rules and Regulations Under the Textile Fiber Products Identification Act (''Textile Rules'') to establish a new generic fiber subclass name and definition as an alternative to the generic name ''olefin'' for a specifically proposed subclass of olefin fibers manufactured by the Dow Chemical Company (''Dow''), of Midland, Michigan. Dow suggested the name ''lastol'' for the fiber, which it described as an elastic, cross-linked olefin fiber capable of retaining its shape at high temperatures and referred to as ''CEF.''

DATES: Comments will be accepted through August 12, 2002.

ADDRESSES: Comments should be submitted to: Office of the Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Ave., NW., Washington DC 20580. Comments should be identified as ''16 CFR Part 303—Textile Rule 8 Dow Comment—P948404.''

FOR FURTHER INFORMATION CONTACT: Neil Blickman, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580; (202) 326–3038.

SUPPLEMENTARY INFORMATION:

I. Background

Rule 6 of the Textile Rules (16 CFR 303.6) requires manufacturers to use the generic names of the fibers contained in their textile products in making fiber content disclosures on labels, as required by the Textile Fiber Products Identification Act (''Textile Act''), 15 U.S.C. 70b(b)(1). Rule 7 of the Textile Rules (16 CFR 303.7) sets forth the generic names and definitions that the Commission has established for synthetic fibers. Rule 8 (16 CFR 303.8) describes the procedures for establishing new generic names.

Dow applied to the Commission on October 18, 2001, for a new olefin fiber subclass name and definition, and supplemented its application with additional information and test data on December 12, 2001, January 16, 2002, and March 19, 2002.[1] Dow stated that its new cross-linked elastic fiber, CEF, is a manufactured olefin textile fiber with a cross-linked polymer network structure. Dow stated that CEF meets the broad definition of olefin fiber in the Textile Rules, 16 CFR 303.7(m). According to Dow, however, CEF differs from commercially available olefin fibers because of its elasticity and wide temperature tolerance, which make it a good choice for easy-care stretch apparel applications.

As a result of CEF's fiber structure, Dow maintained that CEF has the following distinctive properties: (1) Stretch and recovery power that is far superior to that of any olefin fiber; (2) shape retention at temperatures in excess of 170°C, which enables CEF to survive rigorous manufacturing and consumer care processes; and (3) chemical resistance to solvents that typically dissolve conventional olefins. Dow asserted that olefin, widely recognized as a dependable carpet fiber that has no stretch or elastic recovery and poor high temperature stability, is an inappropriate categorization for the elastic olefin fiber, CEF, which is targeted for apparel applications. According to Dow, CEF will offer consumers a wider choice in garments containing stretch fabric. Dow contends, in essence, that it would be confusing to consumers if CEF is called simply ''olefin.''

Dow, therefore, petitioned the Commission to establish the generic name ''lastol'' as an alternative to, and a subclass of, ''olefin.'' In addition, Dow proposed that the Commission add the following sentence to the current definition of olefin in Rule 7(m) to define CEF and similar fibers as a subclass of olefin:

> Where the fiber is a manufactured cross-linked elastic fiber in which a) the fiber-forming substance is a synthetic polymer, with low but significant crystallinity, composed of at least 99 percent by weight of ethylene and at least one other olefin unit, and b) the fiber exhibits substantial elasticity and heat resistance properties not present in traditional olefin fibers, the term lastol may be used as a generic description of the fiber.

The effect of Dow's proposed amendment would be to allow use of the name ''lastol'' as an alternative to the generic name ''olefin'' for the subcategory of olefin fibers meeting the further criteria contained in the sentence added by the proposed amendment.

After an initial analysis with the assistance of a textile expert, the Commission has determined that Dow's proposed new fiber technically falls within Rule 7(m)'s definition of

[1] Dow's petition and supplements thereto are on the rulemaking record of this proceeding. This material, as well as any comments filed in this proceeding, will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, at the Consumer Response Center, Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. Any comments that are filed will be found under the Rules and Regulations Under the Textile Fiber Products Identification Act, 16 CFR Part 303, Matter No. P948404, ''Dow Generic Fiber Petition Rulemaking.'' The comments and petition also may be viewed on the Commission's website at www.ftc.gov.

''olefin.'' [2] The Commission has further determined that Dow's application for a new subclass name and definition merits further consideration. Accordingly, the Commission has issued Dow the designation ''DCC 0001'' for temporary use in identifying CEF fiber pending a final determination on the merits of the application for a new generic fiber subclass name and definition. A final determination will be based on whether the record in this proceeding indicates that Dow meets the Commission's criteria for issuing new fiber subclass names and definitions, as described in Part II, below.

II. Invitation to Comment

The Commission is soliciting comment on Dow's application generally, and on whether the application meets the Commission's criteria for granting applications for new generic fiber subclass names.

The Commission first articulated standards for establishing a new generic fiber ''subclass'' in the proceeding to allow use of the name ''lyocell'' as an alternative generic description for a specifically defined subcategory of ''rayon'' fiber, pursuant to 16 CFR 303.7(d).[3]

In its recent notice of proposed rulemaking regarding DuPont's proposal to establish a generic fiber subclass of ''polyester,'' 67 FR 7104 (Feb. 15, 2002), the Commission further articulated that a new generic fiber subclass may be appropriate in cases where the proposed subclass fiber: (1) Has the same general chemical composition as an established generic fiber category; (2) has distinctive properties of importance to the general public as a result of a new method of manufacture or substantially differentiated physical characteristics, such as fiber structure; and (3) the distinctive feature(s) make the fiber suitable for uses for which other fibers under the established generic name would not be suited, or would be significantly less well suited.[4]

Within the established 24 generic names for manufactured fibers, there are three cases where such generic name alternatives may be used: (1) Pursuant to Rule 7(d), 16 CFR 303.7(d), within the generic category ''rayon,'' the term ''lyocell'' may be used as an alternative generic description for a specifically defined subcategory of rayon fiber; (2) pursuant to Rule 7(e), 16 CFR 303.7(e), within the generic category ''acetate,'' the term ''triacetate'' may be used as an alternative generic description for a specifically defined subcategory of acetate fiber; and (3) pursuant to Rule 7(j), 16 CFR 303.7(j), within the generic category ''rubber,'' the term ''lastrile'' may be used as an alternative generic description for a specifically defined subcategory of rubber fiber.[5]

Dow's application may describe a subclass of generic olefin fibers with distinctive features resulting from physical characteristics of the fiber and its method of manufacture, which meets the above standard for allowing designation by the subclass name ''lastol.'' Alternatively, CEF may fit within the current definition of olefin in Rule 7(m), with or without need for clarification. This notice of proposed rulemaking, therefore, suggests three approaches to resolve the situation, and requests comment from the public on the relative merits of each:

1. Amend Rule 7(m) to broaden its definition for olefin to better describe the allegedly unique molecular structure and physical characteristics of CEF and any similar fibers (without creating a new subclass for CEF);

2. Amend Rule 7(m)'s definition for olefin by creating a separate subclass name and definition for CEF and other similar qualifying fibers within the olefin category; or

3. Deny Dow's application because CEF fiber fits within Rule 7(m)'s definition of olefin without need for any change.

In today's notice of proposed rulemaking, the Commission is soliciting comments on all aspects of the appropriateness of Dow's proposed amendment to Rule 7(m)'s definition of olefin. Although the Commission initially has determined that Dow's new fiber technically falls within the existing Rule 7(m), 16 CFR 303.7(m), definition of ''olefin,'' the Commission believes it is in the public interest to solicit comments on whether it should amend Rule 7(m) by creating a subclass to recognize CEF's characteristics, or otherwise address the petition. Before deciding whether to amend Rule 7, the Commission will consider any comments submitted to the Secretary of the Commission within the above-mentioned comment period.

III. Dow's Petition

Dow's petition and supplemental filings described in detail the CEF fiber. The following subsections are excerpted substantially verbatim.

A. CEF's Chemistry, Structure, and Manufacturing Process

According to Dow, CEF is the first manufactured olefin fiber founded on metallocene-based polyolefin elastomer chemistry. Dow's CEF fiber is manufactured using a melt spinning process. After spinning, the fiber is crosslinked in order to prevent dissolution and impart high-temperature dimensional stability. After the crosslinking process, the polymer chains in the fiber are linked to one another via covalent bonds.

---

[2] Rule 7(m) defines ''olefin'' as ''[a] manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85 percent by weight of ethylene, propylene, or other olefin units, except amorphous (noncrystalline) polyolefins qualifying under paragraph (j)(1) of this section.'' 16 CFR 303.7(m). Rule 7(j)(1) defines ''rubber,'' in part, as ''[a] manufactured fiber in which the fiber-forming substance is comprised of natural or synthetic rubber, including the following categories: (1) [a] manufactured fiber in which the fiber-forming substance is a hydrocarbon such as natural rubber, polyisoprene, polybutadiene, copolymers of dienes and hydrocarbons, or amorphous (noncrystalline) polyolefins. 16 CFR 303.7(j)(1). In its petition, Dow stated that CEF is not a rubber because CEF fibers have a low but significant level of crystallinity, whereas rubber fibers are not crystalline. In addition, CEF exhibits much higher tensile set (lower elastic recovery) than rubber when extended to greater than 100% elongation.

[3] There, the Commission noted that: where appropriate, in considering applications for new generic names for fibers that are of the same general chemical composition as those for which a generic name already has been established, rather than of a chemical composition that is radically different, but that have distinctive properties of importance to the general public as a result of a new method of manufacture or their substantially differentiated physical characteristics, such as their fiber structure, the Commission may allow such fiber to be designated in required information disclosures by either its generic name or, alternatively, by its ''subclass'' name. The Commission will consider this disposition when the distinctive feature or features of the subclass fiber make it suitable for uses for which other fibers under the established generic name would not be suited, or would be significantly less well suited.

60 FR 62352, 62353 (Dec. 6, 1995).

[4] The criteria for establishing a new generic subcategory are different from the criteria to establish a new generic category. The Commission's criteria for granting applications for new generic names are as follows: (1) The fiber for which a generic name is requested must have a chemical composition radically different from other fibers, and that distinctive chemical composition must result in distinctive physical properties of significance to the general public; (2) the fiber must be in active commercial use or such use must be immediately foreseen; and (3) the granting of the generic name must be of importance to the consuming public at large, rather than to a small group of knowledgeable professionals such as purchasing officers for large Government agencies. The Commission believes it is in the public interest to prevent the proliferation of generic names, and will adhere to a stringent application of these criteria in consideration of any future applications for generic names, and in a systematic review of any generic names previously granted that no longer meet these criteria. The Commission announced these criteria on Dec. 11, 1973, 38 FR 34112, and later clarified and reaffirmed them on Dec. 6, 1995, 60 FR 62353, on May 23, 1997, 62 FR 28343, on Jan. 6, 1998, 63 FR 447 and 63 FR 449, on Nov. 17, 2000, 65 FR 69486, and on Feb. 15, 2002, 67 FR 7104.

[5] In a fourth case under consideration, DuPont has proposed that pursuant to Rule 7(c), 16 CFR 303.7(c), within the generic category ''polyester,'' the term ''elasterell-p'' be used as an alternative generic description for a specifically defined subcategory of polyester fiber.

The interpolymer [6] in CEF has been made from ethylene and, typically, octene in excess of 30 weight percent using a constrained geometry catalyst, a member of the metallocene family. The catalyst allows precise control of the molecular architecture of the polymer, which prior to crosslinking has a narrow molecular weight distribution. As a result, the molecules in CEF are very similar in size and composition to each other. In contrast, Dow states that typical olefin fiber manufactured today results from conventional multi-site catalyst technology (such as Ziegler-Natta catalysts). Consequently, typical olefin fiber has a broad compositional molecular weight distribution, and low or no comonomer content.

As a result of CEF's unique chemical structure, its high comonomer content, CEF has lower crystallinity and density than conventional olefin fibers. Unlike conventional olefin fiber where the polymer crystals are in lamellae form,[7] the crystals in the CEF fiber-forming substance are in fringe micelle form.[8] According to Dow, the fringed micellar crystalline morphology and the low, but significant, level of crystallinity in CEF impart elastic properties not seen in typical olefin fibers. The unique morphology of the CEF polymer results in high stretch and elasticity. In contrast, Dow asserts that conventional olefin fiber, such as drawn polypropylene fiber, is highly crystalline and dense. Additionally, conventional olefin fiber has low stretch and no significant elasticity.

B. CEF's Distinctive Properties as a Result of a New Method of Manufacture or Substantially Differentiated Physical Characteristics, Such as Fiber Structure

1. Elasticity

According to Dow, the most notable characteristic (and of greatest importance to consumers) of CEF is its elasticity, which is far superior to that of any conventional olefin fiber. This property is a direct result of CEF's fiber structure. Dow states that CEF's favorable stretch (at least five times its original length before breaking) and elasticity (stretching to twice its length and, when released, recovering to within 25 percent of its original length) are a consequence of its low but significant level of crystallinity. As a result, CEF can be successfully used in clothing applications where stretch is desirable.

In contrast, Dow states that conventional olefin fiber is highly crystalline, with a degree of crystallinity greater than 50 percent. The crystals of conventional olefin fiber are in lamellae form, unlike crystals in the CEF fiber-forming substance, which are in a fringe micelle form. As a result, conventional olefin fiber manufactured today is stiff and inelastic. According to Dow, typical olefin fibers (in their manufactured, ''drawn,'' form) exhibit very low elongation before breaking (typically less than 50%) and, therefore, cannot be used successfully in today's apparel markets for stretch clothing.

2. High Temperature Stability

Dow states that CEF's covalent crosslinks connect adjacent polymer chains into a contiguous three-dimensional polymer network. This crosslinked polymer network structure allows CEF to maintain its shape and mechanical integrity above its crystalline melting temperature. In fact, Dow asserts that CEF retains its shape at temperatures up to 220°C, well in excess of conventional olefin's melting point, which occurs at or below 170°C.

According to Dow, CEF's ability to withstand high temperatures has compelling advantages for textile manufacturers who can use more efficient dye and process methods requiring temperatures in excess of 170°C. Dow states that CEF also has advantages for consumers who can repeatedly wash, dry, and iron fabrics containing CEF at typical temperatures (up to 210°C) without destroying CEF's stretch properties. In contrast, Dow asserts that since conventional olefin fiber manufactured today loses its shape and mechanical integrity at temperatures ranging from 105–170°C, it cannot withstand the rigors of high heat and repeated launderings. Consequently, conventional olefin fiber is not widely used in apparel applications today where the consumer seeks easy wash and wear care.

3. Chemical Resistance

Dow states that CEF's crosslinked polymer network structure also allows CEF to maintain its integrity in solvents that typically dissolve the starting polymer. In contrast, according to Dow, conventional olefin fiber is not crosslinked and, therefore, loses shape and mechanical integrity and/or dissolves above its crystalline melting temperatures which range up to about 170°C.

4. Summary of CEF's Physical Properties

The physical properties of CEF and conventional olefin fiber are summarized in the table below.

Property	CEF	Conventional Olefin
Crystallinity, wt%	12–16	>50
Elongation, %	>400	<15—200
Breaking Strength (gm/den)	>0.9	1.7–6.8
Initial Modulus	0.3	34–56
Density (gm/cc)	0.87–0.875	0.90–0.91
Dissolution Characteristics	Does not dissolve	Dissolves
Temperature Stability	Up to >220°C	Up to 170°C
Manufacturing Method	Melt spinning followed by crosslinking.	Melt spinning

[6] Interpolymer refers to polymers prepared by the polymerization of at least two different types of monomers, typically ethylene and octene.

[7] In lamellae form, the polymer chains are folded in the crystalline or ordered regions.

[8] In fringe micelle form, the polymer chains are parallel to each other in the crystalline regions.

C. CEF's Distinctive Feature(s) Allegedly Make the Fiber Suitable for Uses for Which Other Olefin Fibers Would Not Be Suited, or Would Be Significantly Less Well Suited

Dow asserted that CEF is suitable for uses for which olefin fibers are not suited, or not as well suited. Dow's petition stated:

> Today's olefin—largely seen in carpet, thermal underwear, and socks—does not offer the consumer stretch or the easy-care characteristics gained through high temperature tolerance. To textile mill producers, CEF enables process economies and the production of new products with atypical stretch and performance properties. To the consumer, CEF offers a wider choice in garments containing stretch fabric plus the benefit of easy-care laundering at higher temperatures without degradation of the stretch fiber.[9]

With respect to its commercialization plans, Dow stated that beginning in 1999, it identified and began working with developmental partners who are leaders in the fiber manufacturing and apparel industry around the world. Since the second quarter of 2001, CEF has been successfully made on commercial-scale spinning equipment, with resulting quantities subsequently produced and used in a wide range of fabrics, including both knits and wovens. These fabrics have been used to make a variety of goods, most notably for the apparel market. The market testing process of garments with leading retailers is presently underway, with completion expected within the near future. Dow expects commercialization of CEF to begin at the end of the second quarter of 2002. In effect, therefore, Dow has argued that granting the petition would facilitate the use of CEF fiber in consumer applications, and using a new generic term (like lastol) would help consumers identify products made from CEF. Thus, Dow has maintained that a new generic fiber subclass name would be important to the public at large, not just knowledgeable professionals.

IV. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial regulatory analysis (5 U.S.C. 603–604) are not applicable to this proposal, because the Commission believes that the amendment, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Commission has tentatively reached this conclusion with respect to the proposed amendment, because the amendment would impose no additional obligations, penalties or costs. The amendment simply would allow covered companies to use a new generic name for a new fiber that may not appropriately fit within current generic names and definitions. The amendment would impose no additional labeling requirements.

To ensure that no substantial economic impact is being overlooked, however, the Commission requests public comment on the effect of the proposed amendment on costs, profits, and competitiveness of, and employment in, small entities. After receiving public comment, the Commission will decide whether preparation of a final regulatory flexibility analysis is warranted. Accordingly, based on available information, the Commission certifies, pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed amendment, if promulgated, would not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act

This proposed amendment does not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (PL 104–13, 109 Stat. 163) and its implementing regulations. (5 CFR 1320 *et seq.*) The collection of information imposed by the procedures for establishing generic names (16 CFR 303.8) has been submitted to OMB and has been assigned control number 3084–0101.

List of Subjects in 16 CFR Part 303

Labeling, Textile, Trade Practices.

Authority: Sec. 7(c) of the Textile Fiber Products Identification Act (15 U.S.C. 70e(c)).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–13151 Filed 5–23–02; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–006]

RIN 2115–AA97

Security Zone; Lake Erie, Perry, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent security zone on the navigable waters of Lake Erie in the Captain of the Port Zone Cleveland for the Perry Nuclear Power Plant. This security zone is necessary to protect the Perry Nuclear Power Plant from possible sabotage or other subversive acts, accidents, or possible acts of terrorism. This security zone is intended to restrict vessel traffic from a portion of Lake Erie.

DATES: Comments and related material must reach the Coast Guard on or before June 24, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–02–006 and are available for inspection or copying at U.S. Coast Guard Marine Safety Cleveland, 1055 East Ninth Street, Cleveland, Ohio 44126 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Allen Turner, U.S. Coast Guard Marine Safety Office Cleveland, at telephone number (216) 937–0111.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–02–006), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to submit comments and related materials, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. You may mail comments and related material to U.S. Coast Guard Marine Safety Office Cleveland, 1155 East 9th Street, Cleveland, OH 44115. Marine Safety Office Cleveland maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Cleveland between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Background and Purpose

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists

[9] See Dow's petition dated March 19, 2002, at page 16.

resulting in catastrophic loss of life, the destruction of the World Trade Center, and significant damage to the Pentagon. National security and intelligence officials warn that future terrorists attacks are likely. This regulation proposes to establish a permanent security zone for the Perry Nuclear Power Plant. The security zone consists of all navigable waters of Lake Erie bound by a line drawn between the following coordinates: beginning at 41°48.187′ N, 081°08.818′ W; due north to 41°48.7′ N, 081°08.818′ W; due east to 41°48.7′ N, 081°08.455′ W; due south to the south shore of Lake Erie at 41°48.231′ N, 081°08.455′ W; thence westerly following the shoreline back to the beginning. These coordinates are based upon North American Datum 1983 (NAD 83). Entry into, transit through or anchoring within this security zone is prohibited unless authorized by the Captain of the Port Cleveland or his designated on-scene representative.

Discussion of Proposed Rule

Following the catastrophic nature and extent of damage realized from the attacks of September 11, this proposed rulemaking is necessary to protect the national security interests of the United States against potential future attacks.

On October 12, 2001 we published a temporary final rule establishing a security zone on the waters around Perry Nuclear Power Plant (66 FR 52043). The current rulemaking proposes to establish a permanent security zone in place of that temporary security zone. The size of the zone currently being proposed, however, is smaller than that of the original temporary security zone.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Cleveland (see **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the

Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, it is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

§ 165.T09–111 [Removed]

2. Remove § 165.T09–111.

3. Add § 165.912 to read as follows:

§ 165.912 Security Zone; Lake Erie, Perry, OH.

(a) *Location:* The following area is a security zone: all navigable waters of Lake Erie bounded by a line drawn between the following coordinates beginning at 41°48.187′ N, 081°08.818′ W; then due north to 41°48.7′ N, 081°08.818′ W; then due east to 41°48.7′ N, 081°08.455′ W; then due south to the south shore of Lake Erie at 41°48.231′ N, 081°08.455′ W; thence westerly following the shoreline back to the beginning (NAD 83).

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Cleveland, or the designated on-scene representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: May 20, 2002.

R.J. Perry,

Commander, U.S. Coast Guard, Captain of the Port, MSO Cleveland.

[FR Doc. 02–13137 Filed 5–23–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020508113–2113–01; I.D. 090501D]

RIN 0648–AP12

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid and Butterfish Fisheries; Framework Adjustment 2

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes measures contained in Framework Adjustment 2 (Framework 2) to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). This action would extend the limited entry program for the *Illex* squid fishery for an additional year; modify the *Loligo* squid overfishing definition and control rule; allow for the roll-over of the annual specifications for these fisheries (with the exception of total allowable landings of foreign fishing (TALFF)) in the event annual specifications are not published prior to the start of the fishing year; and allow *Loligo* squid specifications to be set for up to 3 years, subject to annual review. NMFS has disapproved the proposed framework measure to allow *Illex* squid vessels an exemption from the *Loligo* squid trip limit during an August or September closure of the directed *Loligo* squid fishery. This action is necessary to address issues and problems that have developed relative to the management of these fisheries and is intended to further the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on June 10, 2002.

ADDRESSES: Copies of Framework 2, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available on request from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.gov/ro/doc/nr.htm*.

Comments on Framework 2 should be sent to: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the envelope, ''Comments-SMB Framework Adjustment 2.'' Comments also may be sent via facsimile (fax) to 978-281-9135. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail Paul.H.Jones@noaa.gov.

SUPPLEMENTARY INFORMATION: In 1997, Amendment 5 to the FMP established a limited entry program for the *Illex* squid fishery in response to a concern that fishing capacity could otherwise expand to over exploit the stock. At the time the program was established, there were concerns that the capacity of the limited entry vessels might prove, over time, to be insufficient to fully exploit the annual quota. In response to this concern, a 5–year sunset provision was placed on the *Illex* squid limited entry program, and it is currently scheduled to end July 1, 2002. However, in recent years the limited entry fleet has demonstrated that it has sufficient capacity to harvest the long-term potential yield from this fishery. The Mid-Atlantic Fishery Management Council (Council) must prepare an amendment to the FMP to evaluate whether or not the limited entry program should be extended permanently. In the meantime, this action would extend the Illex squid moratorium through July 1, 2003, to prevent overcapitalization while the amendment is being prepared and considered by the Council. This extension complies with the criteria in section 303(b)(6) of the Magnuson-Stevens Fishery Conservation and Management Act. The extension will allow the Council additional time to consider long-term management for the Illex squid fishery, including the limited entry program. Vessels that took small quantities of Illex squid in the past may continue to do so under the incidental catch provision of the FMP.

This action would also authorize the roll-over of the annual specifications for the Atlantic mackerel, squid, and butterfish fisheries. In recent years, publication of the annual specifications

for those fisheries has occurred after the start of the fishing year on January 1, resulting in inefficient management and industry uncertainty. In particular, late publication has affected business entities interested in conducting Joint Venture Processing (JVP) operations for Atlantic mackerel, because such operations cannot be authorized until there is a final rule that includes a JVP allocation. This action would allow the annual Atlantic mackerel, squid, and butterfish specifications from the previous fishing year to roll-over into the next fishing year (excluding TALFF), in the event that annual specifications for that year have not been published. The rolled-over specifications would be superceded by the publication of the current year's annual specifications.

While the primary components of the overfishing definition for *Loligo* squid (the maximum fishing mortality rate threshold and the minimum biomass threshold) remain unchanged, this proposed action would modify the control rules that guide the Council in making harvest recommendations based upon those definitions. The fishing mortality rate (F) control rule adopted for *Loligo* squid in Amendment 8 to the FMP specified that the target fishing mortality rate (F_{msy}) must be reduced to zero if biomass falls below 50 percent of the biomass target (B_{msy}). The target fishing mortality rate increases linearly to 75 percent of F_{msy} as biomass increases to B_{msy}. However, the 29th Stock Assessment Workshop (SAW 29) indicated that the control rule was not appropriate for the stock, and that the target F of zero at 50 percent of the biomass target could be overly conservative. SAW 29 concluded that the apparent resilience of the stock is high, suggesting that it can rebuild quickly from low stock sizes at low to moderate F's. Estimates of biomass based on NMFS' Northeast Fisheries Science Center (NEFSC) fall 1999, spring 2000, and fall 2000 survey indices for *Loligo* squid indicate that the stock is currently at or near B_{msy}. The stock is also no longer listed as overfished in NMFS' Report to Congress: Status of the Fisheries of the United States (January 2001). However, projections of the 29th SAW indicated that if the *Loligo* quid stock were overfished, the biomass could be rebuilt from the minimum biomass threshold ($\frac{1}{2}$ B_{msy}) to levels approximating B_{msy} in as little as 3 years, if F were reduced to 75 percent of F_{msy}. Based on the above information, the Council concluded that the control rule adopted in Amendment 8, requiring an F of zero at $1/2B_{msy}$ was too conservative.

This proposed action would allow specification of an annual quota associated with a target F of up to 90 percent of F_{msy} to be specified if stock biomass is greater than one-half B_{msy}. If stock biomass falls below, or is expected to fall below, one-half B_{msy}, measures to control fishing mortality would be implemented to insure that the stock is rebuilt to B_{msy}in a time period consistent with the requirements of the Magnuson-Stevens Act. NMFS is publishing the proposed definition and also reviewing it in light of the updated Loligo stock assessment conducted in January 2002.

This action also proposes to allow maximum optimum yield (Max OY), allowable biological catch (ABC), optimum yield (OY) and domestic annual harvest (DAH) for Loligo squid to be specified for up to 3 years. If the annual review conducted by the Council through its Monitoring Committee indicates that it is necessary, such a multi-year specification would be revised in the annual specification process.

This action also proposes an outline for a timeframe to be followed for in-season adjustments to the annual specifications for *Loligo* squid. The Council's Monitoring Committee will meet in late spring each year to review available NEFSC survey data and to develop recommendations for the annual harvest for the following year. In addition, at that meeting, the Monitoring Committee will make recommendations regarding inseason adjustments to the annual *Loligo* squid specifications for consideration by the Atlantic Mackerel, Squid, and Butterfish Committee and the Council. Based on an evaluation of the most recent NEFSC spring and fall trawl survey data, the OY, DAH, and ABC specifications may be adjusted to be consistent with the control rule. Upon review of the recommendations from the Council, the Administrator, Northeast Region, NMFS (Regional Administrator) may make inseason adjustments through publication of notification in the **Federal Register**, to be followed by a 30–day comment period, as specified in the current regulations. Inseason adjustment actions may include increases or decreases in the OY, DAH and ABC specifications and may result in opening or closing the directed fishery for *Loligo* squid.

Disapproved Measure

NMFS has disapproved the proposed measure to allow *Illex* squid vessels an exemption from the *Loligo* squid trip limit during an August or September closure of the directed *Loligo* squid fishery. The proposed measure would have allowed vessels fishing in the directed *Illex* squid fishery during a closure of the *Loligo* fishery to land Loligo squid harvested seaward of the 50–fathom (91–m) curve in an amount not to exceed 10 percent of the total weight of *Illex* squid on board the vessel. Currently, all vessels are limited to an incidental catch allowance of 2,500 lb (1,134 kg) of *Loligo* squid per trip during a closure of the directed *Loligo* fishery.

This provision is being disapproved at the proposed rule stage because it has been found to be inconsistent with national standards 2 and 7 under the Magnuson-Stevens Act. Because this action would limit vessels to a *Loligo* squid bycatch of 10 percent of the amount of *Illex* squid on board the vessel, and because of the high-volume nature of the Illex fishery, NMFS believes it would be impossible to enforce the proposed provision. In addition, under this provision, vessels would only be permitted to retain an increased bycatch of *Loligo* squid while directing on *Illex* squid seaward of the 50–fathom (91–m) curve. However, it would be difficult for enforcement agents to determine if a vessel's Loligo squid bycatch was legally taken, or occurred landward of the 50–fathom (9–m) curve. Such a provision would create significant enforcement costs and, therefore, would be inconsistent with national standard 7.

Additionally, the Council did not consider the best scientific data available to it when it defined the exemption measure; thus the measure has been found to be inconsistent with national standard 2. The data examined by NMFS indicates that there are factors contributing to the *Loligo* squid bycatch that were not considered by the Council. NMFS is also concerned that the analysis of the proposed measure did not use a sufficiently long time-series of data to account for the fact that the overlap of the *Illex* and *Loligo* squid stocks is quite variable from year to year. Preliminary review of available data also shows that the Council analysis may have under-estimated the amount of *Loligo* squid that could be landed as incidental catch by vessels other than those fishing under the *Illex* squid exemption. As a result, the analysis of the measure appears not to properly assess the impact on the *Loligo* squid quota management program.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an IRFA that describes the economic impacts this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at in the **SUPPLEMENTARY INFORMATION** section of the preamble. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. There are no new reporting or recordkeeping requirements contained in the Preferred Alternatives or any of the alternatives considered for this action. A copy of the complete IRFA can be obtained from the Northeast Regional Office of NMFS (see **ADDRESSES**) or via the Internet at *http:/www.nero.nmfs.gov*. A summary of the analysis follows.

In addition to the measures described above, the Council considered several alternatives. The non-preferred *Illex*permit alternatives considered were: (1) To extend the moratorium on entry to the *Illex* fishery for an additional 5 years (through June 30, 2007); and (2) to allow the moratorium on entry to the *Illex* fishery to expire in 2002 (no action).

The alternative specification measures were: (1) If annual specifications are not published prior to the start of the fishing year, the fisheries would operate without specifications and Joint Ventures could not be conducted until specifications were published (no action/status quo); (2) if annual specifications are not published prior to the start of the fishing year, a set of default specifications would apply until the specifications are published; (3) if annual specifications are not published prior to the start of the fishing year, the fisheries would be closed until the final specifications are published; (4) if annual specifications for Atlantic mackerel are not published prior to the start of the fishing year, the previous year's specifications for Atlantic mackerel (excluding TALFF) would apply, until final specifications are published; and (5) if annual specifications for Atlantic mackerel are not published prior to the start of the fishing year, a set of default specifications (excluding TALFF) would apply until the specifications are published.

The alternative *Loligo* overfishing definitions were: (1) An annual quota specified consistent with a target F of up to 90 percent F_{msy}if stock biomass is greater than the minimum biomass threshold ($\frac{1}{2}$ B_{msy}). If stock biomass was expected to fall below the minimum biomass threshold ($\frac{1}{2}$ Bmsy), measures would be implemented to rebuild the stock to Bmsy in 3 to 5 years; (2) an annual quota specified consistent with a target F of up to 90 percent Fmsy if stock biomass is greater than the minimum biomass threshold ($\frac{1}{2}$ $_{Bmsy}$). If stock biomass was below the minimum biomass threshold ($\frac{1}{2}$ B_{msy}), measures would be implemented to rebuild the stock to B_{msy} in 3 to 10 years, but no longer than 10 years; (3) maintain current control rule and quota setting procedure for *Loligo* (no action/status quo).

Illex **Moratorium Extension**

The proposed action would extend the moratorium on entry of new vessels into the Illex fishery for one year; therefore no impact is expected on vessels in the fishery in 2002 (and the first half of 2003), compared to individual vessel revenues in 2001. The Council assumed that the market and prices are expected to remain stable. Any changes in individual vessel revenues would be the result of factors outside the scope of the moratorium (e.g., change in fishing practices for individual vessels, or changes in abundance and distribution of *Illex* squid).

New vessels entering the fishery would limit per vessel share of the *Illex* squid quota and reduce revenues for the existing moratorium vessels proportionally. Computing the negative impacts of revenue losses for the existing moratorium vessels is impossible due to the redirection of effort into the *Illex* squid fishery. Therefore, the Council decided to assume three scenarios that presumed revenues derived from landings of *Illex* squid would be reduced by 75, 50, and 25 percent due to an assumed increase in vessels that have not participated in the *Illex* squid fishery.

Under alternative 2, the IRFA review of revenue impacts examined the landings of vessels in the existing moratorium fishery and presumed that revenues derived from landing *Illex* for these vessels would be reduced by 75 percent due to an assumed increase in effort of 75 percent. A total of 109 vessels were projected to be impacted by revenue losses that ranged from less than 5 percent for 79 vessels, to a maximum of 40–49 percent for 2 vessels. There were no impacted vessels home-ported in Maryland, New Hampshire, or Virginia; a high of 15 vessels had home ports in New Jersey. Other impacted vessels were home ported in Massachusetts, Rhode Island, New York, and North Carolina. Presumably, other vessels entering the fishery would experience gains in revenues.

Under alternative 3, the IRFA review of revenue impacts presumed that vessel revenues derived from landing *Illex* would be reduced by 50 percent due to an assumed increase in effort of 50 percent. A total of 109 vessels were projected to be impacted by revenue losses that ranged from less than 5 percent for 84 vessels, to a maximum of 30–39 percent for one vessel. There were no impacted vessels home-ported in Maryland, New Hampshire, or Virginia; a high of 11 vessels had home ports in New Jersey. Others were in Massachusetts, Maine, Rhode Island, and North Carolina. Presumably, other vessels entering the fishery would experience gains in revenues.

Under alternative 4, the IRFA review of revenue impacts presumed that vessel revenues derived from landing *Illex* would be reduced by 25 percent due to an assumed increase in effort of 25 percent. A total of 109 vessels were projected to be impacted by revenue losses that ranged from less than 5 percent, for 88 vessels, to a maximum of 10-19 percent for 8 vessels. The number of impacted vessels by home state ranged from none in Maryland, New Hampshire, New York, and Virginia, to a high of 11 in New Jersey. Other impacted vessels were home ported in Massachusetts, Maine, Rhode Island, and North Carolina. Presumably, other vessels entering the fishery would experience gains in revenues.

Specifications Process

The only alternative considered concerning quota specifications that would be expected to change gross vessel revenues would be the option that would close the fisheries if the final specifications are not published by the start of the fishing year. This measure would have significant negative economic consequences for vessels operating in the Atlantic mackerel, *Loligo* and butterfish fisheries because landings of these three species would be prohibited until NMFS publishes the final rule for new specifications and significant landings occur early in the fishing year. The IRFA analysis assumed that these fisheries would most likely be closed during the months of January and February under this alternative. The total value of the landings of these three species during the first 2 months of 1999 represented about 20 percent of the annual revenue generated for all three species in 1999. For Atlantic mackerel, 291 vessels landed 12.1 million lb of mackerel valued at $1.7 million. A closure in January and

February would result in a loss of mackerel revenue of $5,842 per vessel under this alternative. For *Loligo*, 281 vessels landed 6.5 million lb of *Loligo* valued at $5.1 million. A closure in January and February would result in a loss of *Loligo* revenue of $18,361 per vessel under this alternative. For butterfish, 228 vessels landed 1.4 million lb of butterfish valued at $0.9 million. A closure in January and February would result in a loss of butterfish revenue of $4,067 per vessel under this alternative. This measure would be expected to have little or no economic impact on the *Illex* fishery since the directed fishery occurs during the summer.

Loligo **Overfishing Definition**

None of the alternatives considered concerning the *Loligo* control rule and in-season adjustment are expected to change gross revenues. Therefore, the IRFA concluded that neither the preferred nor the non-preferred alternative represents catch constraints on vessels in these fisheries in aggregate or individually. Without such catch constraints, there is no impact on revenues.

However, the no action alternative could have severe economic consequences if the stock biomass falls below $\frac{1}{2}$ B_{msy}. If the Council had followed the control rule implemented in Amendment 8 for the 2000 fishery, the *Loligo* fishery would have been closed for the entire year. Thus failure to replace the control rule could have unwarranted negative economic and social consequences. The best example is for fishing year 2000. If the Council had followed the control rule, the fishery would have been closed, with significant impacts in participant vessels. Preliminary NMFS data show that 525 vessels landed 34.9 million lb of *Loligo* in 2000, valued at $27.3 million. A complete closure of the fishery in 2000 would have resulted in an economic loss of $52,000 per vessel due to loss of *Loligo* revenue.

It has been determined that this proposed rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 22, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.4, paragraph (a)(5)(i), the introductory text is revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(5) * * *

(i) *Loligo squid/butterfish and Illex squid moratorium permits.* (*Illex* squid moratorium is applicable from July 1, 1997, until July 1, 2003).* * *

* * * * *

3. In § 648.20, paragraph (b) is revised to read as follows:

§ 648.20 Maximum optimum yields (OYs).

* * * * *

(b) *Loligo*—the catch associated with a fishing mortality rate of F_{msy}, or the best available proxy for F_{msy}.

* * * * *

4. In § 648.21, paragraphs (a)(1) and (d)(1) are revised and paragraphs (a)(4) and (a)(5) are added to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

(a) * * *

(1) Initial OY (IOY), including research quota (RQ), domestic annual harvest (DAH), and domestic annual processing (DAP) for *Illex* squid;

* * * * *

(4) Initial OY (IOY), including research quota (RQ), domestic annual harvest (DAH), and domestic annual processing (DAP) for *Loligo* squid, which, subject to annual review, may be specified for a period of up to 3 years;

(5) Inseason adjustment, upward or downward, to the specifications for *Loligo* squid as specified in paragraph (e) of this section.

* * * * *

(d) * * *

(1) The Squid, Mackerel, and Butterfish Committee will review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment received thereon, the Squid, Mackerel, and Butterfish Committee must recommend to the MAFMC appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC will review these recommendations and, based on the recommendations and any public comment received thereon, must recommend to the Regional Administrator appropriate specifications and any measures necessary to assure that the specifications will not be exceeded. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will review the recommendations and, on or about November 1 of each year, will publish notification in the **Federal Register** proposing specifications and any measures necessary to assure that the specifications will not be exceeded and providing a 30–day public comment period. If the proposed specifications differ from those recommended by the MAFMC, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section. The MAFMC's recommendations will be available for inspection at the office of the Regional Administrator during the public comment period. If the annual specifications for squid, mackerel, and butterfish are not published in the **Federal Register** prior to the start of the fishing year, the previous year's annual specifications, excluding specifications of TALFF, will remain in effect. The previous year's specifications will be superceded as of the effective date of the final rule implementing the current year's annual specifications.

[FR Doc. 02–13240 Filed 5–22–02; 2:44 pm]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 101

Friday, May 24, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. #CN–02–003]

Advisory Committee on Universal Cotton Standards; Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) announces a forthcoming meeting of the Advisory Committee on Universal Cotton Standards.

DATES: The meeting dates are: June 13, 2002, at 9 a.m. to 5 p.m., Memphis, Tennessee. June 14, 2002, at 9 a.m. until the review is complete, Memphis, Tennessee.

ADDRESSES: The meeting locations are: June 13 at Peabody Hotel, 149 Union Avenue, Memphis, Tennessee 38103. June 14 at USDA, AMS, Cotton Programs offices at 3275 Applying Road, Memphis, Tennessee 38133. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Mail comments to James Knowlton, Standardization and Engineering Branch, Cotton Programs, AMS, USDA, 3275 Applying Road Memphis, Tennessee 38133, or send comments by electronic mail to: *james.knowlton@usda.gov.*

SUPPLEMENTARY INFORMATION: The committee includes representatives of all segments of the U.S. cotton industry and the twenty-four overseas associations that are signatories to the Universal Cotton Standards Agreement, which is authorized under the United States Cotton Standards Act (7 U.S.C. 51–65). The purpose of the meeting is for the Committee to review the American Upland Cotton Standards, which are prepared by the United States Department of Agriculture (USDA), and to make recommendations to USDA concerning establishment and revision of the standards. The marketing of U.S. cotton is supported and enhanced through the committee's participation in the development of standards for U.S. Upland Cotton.

Thursday June 13, 2002, at 9 a.m. with opening remarks and introductions the Advisory Committee convenes and the standards review and approval process is initiated. Friday June 14, 2002, at 9 a.m. the Committee reconvenes for the drawing of sets for the Arbitration Boards, discussion of proposals, and concludes the matching and approval process of remaining universal standards.

Dated: May 20, 2002.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–13123 Filed 5–23–02; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–023–2]

Risk Management Analysis for the Importation of Clementines From Spain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are reopening and extending the comment period for a risk management analysis prepared by the Animal and Plant Health Inspection Service relative to a proposed rule currently under consideration that would allow the importation of clementines from Spain to resume. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments we receive on the risk management analysis that are postmarked, delivered, or e-mailed by June 14, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–023–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–023–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 02–023–1'' on the subject line.

You may read any comments that we receive on Docket No. 02–023–1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Ron A. Sequeira, Center for Plant Health Science and Technology, PPQ, APHIS, 1017 Main Campus Drive, Suite 2500, Raleigh, NC 27606–5202; (919) 513–2663.

SUPPLEMENTARY INFORMATION:

Background

On April 16, 2002, we published in the **Federal Register** (67 FR 18578–18579, Docket No. 02–023–1) a notice advising the public that a risk management analysis has been prepared by the Animal and Plant Health Inspection Service relative to a proposed rule currently under consideration that would allow the importation of clementines from Spain to resume. In that notice, we stated that we were making the risk management analysis available to the public for review and comment.

Comments on the risk management analysis were required to be received on or before May 16, 2002. We are reopening and extending the comment period on Docket No. 02–023–1 until June 14, 2002. This action will allow interested persons additional time to

prepare and submit comments. We will also consider all comments received between May 17, 2002 (the day after the close of the original comment period) and the date of this notice.

Authority: 7 U.S.C. 166, 450, 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 21st day of May 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–13067 Filed 5–21–02; 12:05 pm]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Intermountain Region; Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 36 CFR 217. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after June 1, 2002. The list of newspapers will remain in effect until December 1, 2002 when another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Barbara Schuster, Regional Appeals Manager, Intermountain Region, 324 25th Street, Ogden, UT 84401, and Phone (801) 625–5301.

SUPPLEMENTARY INFORMATION: The administrative appeal procedures 36 CFR 215 and 36 CFR 217, of the Forest Service require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: the decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins which is the day following publication of the notice.

The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Regional Forester, Intermountain Region

For decisions made by the Regional Forester affecting National Forests in Idaho: *The Idaho Statesman,* Boise, Idaho
For decisions made by the Regional Forester affecting National Forests in Nevada: *The Reno Gazette-Journal,* Reno, Nevada
For decisions made by the Regional Forester affecting National Forests in Wyoming: *Casper Star-Tribune,* Casper, Wyoming
For decisions made by the Regional Forester affecting National Forests in Utha: *Salt Lake Tribune,* Salt Lake City, Utah
If the decision made by the Regional Forester affects all National Forests in the Intermountain Region, it will appear in: *Salt Lake Tribune,* Salt Lake City, Utah

Ashley National Forest

Ashley Forest Supervisors decisions: *Vernal Express,* Vernal, Utah
Vernal District Ranger decisions: *Vernal Express,* Vernal, Utah
Flaming Gorge District Ranger for decisions affecting Wyoming: *Casper Star Tribune,* Casper, Wyoming
Flaming Gorge District Ranger for decisions affecting Utah: *Vernal Express,* Vernal, Utah
Roosevelt and Duchesne District Ranger decisions: Uintah Basin Standard, Roosevelt, Utah

Boise National Forest

Boise Forest Supervisor decisions: *The Idaho Statesman,* Boise, Idaho
Mountain Home District Ranger decisions: *The Idaho Statesman,* Boise, Idaho
Idaho City District Ranger decisions: *The Idaho Statesman,* Boise, Idaho
Cascade District Ranger decisions: *The Long Valley Advocate,* Cascade, Idaho
Lowman District Ranger decisions: *The Idaho World* Garden Valley, Idaho
Emmett District Ranger decisions: *The Messenger-Index,* Emmett, Idaho

Bridger-Teton National Forest

Bridger-Teton Forest Supervisor decisions: *Casper Star-Tribune,* Casper, Wyoming
Jackson District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Buffalo District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Big Piney District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Pinedale District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Greys River District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming
Kemmerer District Ranger decisions: *Casper Star-Tribune,* Casper, Wyoming

Caribou-Targhee National Forest

Caribou-Targhee Forest Supervisor decisions for the Caribou portion: *Idaho State Journal,* Pocatello, Idaho
Soda Springs District Ranger decisions: *Idaho State Journal,* Pocatello, Idaho
Montpelier District Ranger decisions: *Idaho State Journal,* Pocatello, Idaho
Westside District Ranger decisions: *Idaho State Journal,* Pocatello, Idaho
Carbiou-Targhee Forest Supervisor decisions for the Targhee Portion: *The Post Register,* Idaho Falls, Idaho
Dubois District Ranger decisions: *The Post Register,* Idaho Falls, Idaho
Island Park District Ranger decisions: *The Post Register,* Idaho Falls, Idaho
Ashton District Ranger decisions: *The Post Register,* Idaho Falls, Idaho
Palisades District Ranger decisions: *The Post Register,* Idaho Falls, Idaho
Teton Basin District Ranger decisions: *The Post Register,* Idaho Falls, Idaho

Dixie National Forest

Dixie Forest Supervisor decisions: *The Daily Spectrum,* St. George, Utah
Pine Valley District Ranger decisions: *The Daily Spectrum,* St. George, Utah
Cedar City District Ranger decisions: *The Daily Spectrum,* St. George, Utah
Powell District Ranger decisions: *The Daily Spectrum,* St. George, Utah
Escalante District Ranger decisions: *The Daily Spectrum,* St. George, Utah
Teasdale District Ranger decisions: *The Daily Spectrum,* St. George, Utah

Fishlake National Forest

Fishlake Forest Supervisor decisions: *Richfield Reaper,* Richfield, UT
Loa District Ranger decisions: *Richfield Reaper,* Richfield, UT
Richfield District Ranger decisions: *Richfield Reaper,* Richfield, UT
Beaver District Ranger decisions: *Richfield Reaper,* Richfield, UT

Fillmore District Ranger decisions: *Richfield Reaper,* Richfield, UT

Humboldt-Toiyabe National Forests

Humboldt-Toiyabe Forest Supervisor decisions for the Humboldt portion: *Elko Daily Free Press,* Elko, Nevada
Humboldt-Toiyabe Forest Supervisor decisions for the Toiyabe portion: *Reno Gazette-Journal,* Reno, Nevada
Sierra Ecosystem Coordination Center (SECO):
Carson District Ranger decisions: *Mammoth Times,* Mammoth Lakes, California
Bridgeport District Ranger, decisions: *The Review-Herald,* Mammoth Lakes, California
Spring Mountains National Recreation Area Ecosystem (SMNRAE):
Spring Mountains National Recreation Area District Ranger decisions: *Las Vegas Review Journal,* Las Vegas, Nevada
Central Nevada Ecosystem (CNECO):
Austin District Ranger decisions: *Reno Gazette-Journal,* Reno, Nevada
Tonopah District Ranger decisions: *Tonopah Times Bonanza-Goldfield News,* Tonopah, Nevada
Ely District Ranger decisions: *Ely Daily Times,* Ely, Nevada
Northeast Nevada Ecosystem (NNECO):
Mountain City District Ranger decisions: *Elko Daily Free Press,* Elko, Nevada
Ruby Mountains District Ranger decisions: *Elko Daily Free Press,* Elko, Nevada
Jarbidge District Ranger decisions: *Elko Daily Free Press,* Elko, Nevada
Santa Rosa District Ranger decisions: *Humboldt Sun,* Winnemucca, Nevada

Manti-LaSal National Forest

Manti-LaSal Forest Supervisor decisions: *Sun Advocate,* Price Utah
Sanpete District Ranger decisions: *The Pyramid,* Mt. Pleasant, Utah
Ferron District Ranger decisions: *Emery County Progress,* Castle Dale, Utah
Price District Ranger decisions: *Sun Advocate,* Price Utah
Moab District District Ranger decisions: *The Times Independent,* Moab, Utah
Monticello District Ranger decisions: *The San Juan Record,* Monticello, Utah

Payette National Forest

Payette Forest Supervisor decisions: *Idaho Statesman,* Boise, Idaho
Weiser District Ranger decisions: *Signal American,* Weiser, Idaho
Council District Ranger decisions: *Council Record,* Council, Idaho
New Meadows, McCall, and Krassel District Ranger decisions: *Star News,* McCall, Idaho

Salmon-Challis National Forests

Salmon-Challis Forest Supervisor decisions for the Salmon portion: *The Recorder-Herald,* Salmon, Idaho
Salmon-Challis Forest Supervisor decisions for the Challis portion: *The Challis Messenger,* Challis, Idaho
North Fork District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho
Leadore District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho
Salmon/Cobalt District Ranger decisions: *The Recorder-Herald,* Salmon, Idaho
Middle Fork District Ranger decisions: *The Challis Messenger,* Challis, Idaho
Challis District Ranger decisions: *The Challis Messenger,* Challis, Idaho
Yankee Fork District Ranger decisions: *The Challis Messenger,* Challis, Idaho
Lost River District Ranger decisions: *The Challis Messenger,* Challis, Idaho

Sawtooth National Forest

Sawtooth Forest Supervisor decisions: *The Times New,* Twin Falls, Idaho
Burley District Ranger decisions: *Ogden Standard Examiner.* Ogden, Utah, for those decisions on the Burley District involving the Raft River Unit. *South Idaho Press,* Burley, Idaho, for decisions issued on the Idaho portions of the Burley District
Twin Falls District Ranger decisions: *The Times News,* Twin Falls, Idaho
Ketchum District Ranger decisions: *Idaho Mountain Express,* Ketchum, Idaho
Sawtooth National Recreation Area: *Challis Messenger,* Challis, Idaho
Fairfield District Ranger decisions: *The Times News,* Twin Falls, Idaho

Uinta National Forest

Uinta Forest Supervisor decisions: *The Daily Herald,* Provo, Utah
Pleasant Grove District Ranger decisions: *The Daily Herald,* Provo, Utah
Heber District Ranger decisions: *The Daily Herald,* Provo, Utah, and
Spanish Fork District Ranger decisions: *The Daily Herald,* Provo, Utah

Wasatch-Cache National Forest

Wasatch-Cache Forest Supervisor decisions: *Salt Lake Tribune,* Salt Lake City, Utah
Salt Lake District Ranger decisions: *Salt Lake Tribune,* Salt Lake City, Utah
Kamas District Ranger decisions: *Salt Lake Tribune,* Salt Lake City, Utah
Evanston District Ranger decisions: *Uintah County Herald,* Evanston, Wyoming
Mountain View District Ranger decisions: *Uintah County Herald,* Evanston, Wyoming
Ogden District Ranger decisions: *Ogden Standard Examiner,* Ogden, Utah
Logan District Ranger decisions: *Logan Herald Journal,* Logan, Utah

Dated: May 17, 2002.

Elizabeth G. Close,

Acting Deputy Regional Forester.

[FR Doc. 02–13070 Filed 5–23–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Health and Restoration Project, National Forests in Alabama, Bankhead National Forest, Winston, Lawrence and Franklin Counties, Alabama

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Forest Service will prepare an Environmental Impact Statement on a proposal to emphasize forest health initiatives across the Bankhead National Forest in a systematic five-year program involving:

1. Intermediate thinning of approximately 13,200 acres of loblolly pine forest to favor conversion to native upland dry and very dry (xeric) oak forest and woodland communities, reduce short-term risks to Southern Pine Beetle (SPB) infestations, and reduce future forest fuel buildups.

2. Intermediate thinning of approximately 5,200 acres of loblolly pine forest to favor conversation to native shortleaf/bluestem woodland communities or very dry (xeric) pineoak forest and woodlands; reduce short-term risks to SPB infestations; and reduce future forest fuel buildups.

3. Intermediated thinning of approximately 3,200 acres of loblolly pine forest to favor conversion to native longleaf/bluestem woodland communities; reduce short-term risks to SPB infestations; and reduce future forest fuel buildups.

4. Natural reforestation and associated site preparation on approximately 4,700 acres of areas impacted by SPB to restore these areas to native upland dry and very dry (xeric) oak forest and woodland communities.

5. Artificial reforestation and associated site preparation on approximately 2,200 acres of ares impacted by SPB to restore these areas to native shortleaf/bluestem woodland communities.

6. Artificial reforestation and associated site preparation on approximately 800 acres of areas impacted by SPB to restore these areas

to native longleaf/bluestem woodland communities.

DATES: Comments concerning this analysis should be received in writing by July 6, 2002.

ADDRESSES: Send written comments to: District Ranger, Bankhead NF, P.O. Box 278, Double Springs, AL 35553.

FOR FURTHER INFORMATION CONTACT: Glen Gaines, District Ranger, John Creed, EIS Team Leader, Kathy Wallace, Silviculturist, Tom Counts, Wildlife Biologist, Telephone number: 205–489–5111, FAX Number: 205–489–3427.

SUPPLEMENTARY INFORMATION:

A. The Proposal

The Forest Service proposes to implement a five-year schedule of work to emphasize sustaining short- and long-term forest health and the restoration of six (6) native upland forest community types, including all associated plant and wildlife species, on the Bankhead National Forest located in Winston, Lawrence, and Franklin Counties, Alabama. The proposed actions will focus on (1) areas that are currently occupied by loblolly pine forest that are between the ages of 15 and 45 years old and (2) areas 10 acres and larger impacted by recent SPB infestations. The actions will include intermediate thinning in loblolly pine forest, natural and artificial restoration to reforest SPB impacted areas, and silvicultural site preparation of SPB impacted areas to better insure successful reforestation efforts. Actions proposed include:

1. Intermediate thinning of approximately 13,200 acres of loblolly pine forest to favor conversion to native upland dry and very dry (xeric) oak forest and woodland communities, reduce short-term risks to SPB infestations, and reduce future forest fuel buildups.

2. Intermediate thinning of approximately 5,200 acreas of loblolly pine forest to favor conversion to native shortleaf/bluestem woodland communities or very dry (xeric) pine-oak forest and woodlands, reduce short-term risks to SPB infestations, and reduce future forest fuel buildups.

3. Intermediate thinning of approximately 3,200 acres of loblolly pine forest to favor conversion to native longleaf/bluestem woodland communities, reduce short-term risks to SPB infestations, and reduce future forest fuel buildups.

4. Natural reforestation and site preparation with hand tools on approximately 4,700 acres of areas impacted by SPB to restore these areas to native upland dry and very dry (xeric) oak forest and woodland communities. Prescribed firm may be used as a site preparation tool on some of these areas. Site specific information is available at the Bankhead Ranger District office in Double Springs, AL.

5. Artificial reforestation and site preparation by roller drum chopping and prescribe fire on approximately 2,000 acres of areas impacted by SPB to restore theses areas to native shortleaf/bluestem woodland communities. Site specific information is available at the Bankhead Ranger District office in Double Springs, AL.

6. Artificial reforestation and site preparation by roller drum chopping and prescribe fire on approximately 800 acres of areas impacted by SPB to restore these areas to native longleaf/bluestem woodland communities. Site specific information is available at the Bankhead Ranger District office in Double Springs, AL.

B. Needs for the Proposal

1. Begin the process of returning loblolly pine plantations to longleaf/bluestem, shortleaf/bluestem, or upland hardwood ecosystems by thinning.

2. Thinning will reduce the risk of SPB attack (Final Environmental Impact Statement For the Suppression of the Southern Pine Beetle).

3. Restore areas heavily impacted by SPB to longleaf/bluestem, shortleaf/bluestem, or upland hardwood by site preparation and planting or by natural regeneration with or without site preparation.

C. Nature and Scope of the Decision to be Made

The Bankhead National Forest is in a unique position to implement natural resource management actions aimed at sustaining a representation of nine (9) forest community types that are native to the Southern Cumberland Plateau physiographic region. Emphasis will be placed on maintaining forest and plant community types not abundant on private lands. These communities include fire dependent upland pine/bluestem and oak woodland ecosystems, mid-to late-successional deciduous forests (including cove) hardwood/eastern hemlock forests), old-growth representation of all nine (9) forest community types, and eight (8) rare plant community types.

After the ice age receded approximately 10,000 years ago, the composition of deciduous and pine forests in eastern North America prior to European settlement was largely influenced by climate, natural events (both large-scale and small-scale) and the use of fire by Native Americans. There is increasing evidence that humans actively used woodland fires on a regular basis for a variety of reasons and the forests European settlers first encountered were a result of regular occurrence of fire. This included both upland hardwood forests/woodlands and pine woodlands.

Over the last 100–200 years, fire has been effectively excluded from forests throughout the southern Cumberland Plateau, including the area that is now the Bankhead National Forest. without fire, the range of native, fire dependent forest communities has not been maintained and is now very uncommon across the North Alabama landscape. These communities include the shortleaf/bluestem woodlands, very dry (xeric) oak-pine woodlands, dry and very dry (xeric) oak forest and woodlands, and the northern extent of longleaf/bluestem woodlands. The absence of fire, in combination with major land use changes, has also resulted in a decline of native grassland and shrub conditions that should be common in some of the upland forests. In turn, a decline in native plant and animal diversity across the region has occurred.

The Alabama National Forest (now the northern portion of the Bankhead National Forest) was established in 1914 as a result of the Weeks Act, for the primary purpose of helping to protect the nations watersheds and streams. During the early years the emphasis of the Forest Service was land acquisition and custodial responsibilities. Beginning in the 1930s, the Civilian Conservation Corp provided the labor needed to reestablish forests on abandoned farmland and previously cutover land, which was mostly in the uplands. The primary species used to reestablish forest conditions was loblolly pine. Beginning in the 1960s, the Forest Service initiated new efforts to improve forest economic yields by replacing some upland hardwood forests with faster growing loblolly pine. At the time, loblolly pine offered the best chance of high survival and success in reforestation. These efforts, along with some natural establishment of loblolly pine, have resulted in approximately 68,000 acres typed as loblolly pine on the Bankhead. While loblolly pine is a native tree species, the dominance of pure stands of loblolly pine is probably not typical of native, fire dependent woodlands occurring in the uplands.

Over the past decade, the Bankhead National Forest has been experiencing Southern Pine Beetle infestations at epidemic levels, primarily in loblolly pine forests. The epidemic peaked in the summer of 2000 and continued at

very high levels through 2001. An estimate 21,000 acres of pine forest have been killed by this epidemic. Most of the mortality occurred within the Sipsey Wilderness, Proposed Thompson Creek Back Country Area, Kinlock Study Area, High Town Path Study Area, Indian Tomb Hollow Study Area, and Proposed Flint Creek Botanical area where suppression efforts did not take place. The epidemic has resulted in large acres of standing dead trees that are a public safety hazard along trails/roads and these areas have increased forest fuel loads that escalate the risk of catastrophic wildfires in the future.

Approximately 47,000 acres typed as loblolly pine remain on the Bankhead. Of these acres, there are approximately 22,100 acres of loblolly pine forest between the age of 15 and 45 years old with an immediate need for intermediate thinning to reduce the risk of SPB attack (Final Environmental Impact Statement for the Suppression of the Southern Pine Beetle).

This proposal will restore and sustain six (6) upland forest and woodland communities on approximately 29,100 acres currently types as loblolly pine. The restoration will be initiated with intermediate commercial thinning on approximately 21,800 acres and reforestation actions on approximately 7,500 acres included within the scope of this decision.

Existing Forest Communities Not Within the Scope of This Decision

1. Six (6) of the deciduous community types currently exist on approximately 85,295 acres throughout the Bankhead National Forest and are not within the scope of this decision. These areas will be characterized as mid- to late-successional deciduous forests. These forests will have a continuous dominant canopy of large trees, with occasional small gaps up to ½ acre in size. Fire has not significantly influenced the composition of these communities, so most have a well-developed shrub and mid-story canopy. The communities and approximate acres include:

Community type	Estimated existing acres
Northern Hardwood Forest	1,455
Mixed Mesophytic (Cove-Hemlock) Forest	14,365
Eastern Riverfornt Forest	4,381
Moderately moist (mesic) Oak Forest	46,131
Dry and Moderately moist (mesic) Oak-Pine Forest	15,041
Dry and Very dry (xeric) Oak Forest	3,922

These forests will contribute a range of habitat conditions that vary from suitable to optimal for those species of plants and animals typically found in association with forests of these successional stages. Some representatives of the species typically found within this range of habitat conditions in the mid to late successional stages of bottomland and other deciduous forest include the hooded warbler, cerulean warbler, summer tanager, wood thrush, Louisiana water thrush, Acadian flycatcher, white-tailed deer, eastern wild turkey, Indiana bat and the eastern gray squirrel.

2. Additional pine community types currently exist on approximately 61,532 acres throughout the Bankhead National Forest and are not within the scope of this decision. The conditions of these areas range from early successional (0–10 years of age) forests to mid- and late-successional forests. The early successional pine forests are in grass/shrub to seedling/sapling conditions. Some of these grass/forb areas contain sparse over-story pine. The mid-late successional forest have continuous dominant canopy of medium to large-sized trees of moderate tree density. The frequency of fire has not significantly influenced the composition of these communities so most have a well-developed shrub and/or mid-story canopy. The communities and approximate acres include:

Community type	Estimated existing acres
Longleaf Pine and Longleaf-Hardwood	1,549
Dry and very dry (xeric) Pine and Pine-Oak Forest	8,777
Loblolly Pine, Mixed Pine, and Loblolly-Hardwood	51,206

These forests will contribute suitable and optimal habitat for southern pine plant and animal associates, mixed very dry (xeric) forest associates, early successional plant and animal associates, game species, and cave species (those requiring forest conditions for summer maternity/roosting).

D. Proposed Scoping Process

The scoping period associated with this Notice of Intent (NOI) will be thirty (30) days in length, beginning the day after publication of this notice. Preliminary scoping for this proposal began in November 2001 when information was shared with the public on the proposal and plans to document the analysis in an Environmental Impact Statement (EIS). Public meetings will be held on June 27, and June 29,2002, from 9 a.m. to 1 p.m. to discuss the proposal and visit some selected areas that may be treated.

The Bankhead National Forest is seeking additional information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in or affected by the proposed action. This input will be used in preparation of the Draft Environmental Impact Statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those, which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives.

E. Preliminary Issues Identified to Date Include

1. Protection of soil and water resources.
2. Impacts of the proposed treatments on Federally listed species of plants and wildlife, which are defined by the Endangered Species Act of 1973 as amended, Forest Service Regional Forester's Sensitive Species list, and upon locally rate species.
3. Short and long term impacts on recreational experiences on the Bankhead National Forest.
4. Protection of cultural resources.
5. Effects on management indicator species.

F. Possible Alternatives Identified to Date Include

1. No Action: This alternative will serve as a baseline for comparison of alternatives. Present management activities will continue but the proposed project will not be done. This alternative will be fully developed and analyzed.
2. Proposed Action:

Restoration Activities for Native Upland Deciduous Forests and Woodlands

There will be intermediate thinning of approximately 13,200 acres of loblolly pine forest to favor conversion to dry and very dry (xeric) oak forest and woodlands, moderately moist (mesic) oak forests, and dry and moderately moist (mesic) oak-pine forests, reduce short-term risks to SPB infestations, and reduce forest fuel buildups.

The loblolly pine thinning program will reduce basal area to between 50 to

70 square feet per acre. Trees favored for retention in order of priority in these areas will include (1) dominant hardwood trees, (2) co-dominant hardwood trees, and (3) dominant/co-dominant pine. The favored hardwood species will include a variety of oak and hickory species. Consultation will be conducted with the U.S. Fish and Wildlife Service regarding coordination of restoration activities with Recovery Plans for Federally listed species. The top priority stands for thinning will be those between 15–45 years old, with high tree densities. It is proposed that all timber sale harvest options be available for this program.

The thinning will allow the development of young oak, hickory, and other associated hardwood species in the understory that are intolerant of shade. In some cases, the thinning will actually shift the forest condition from predominantly pine forest to a predominatly deciduous forest condition.

Natural reforestation, with or without site preparation, as well as the possibility of artificial reforestation, will be conducted on approximately 4,700 acres of former loblolly pine forest impacted by SPB infestations. Site preparation may include mechanical treatment, prescribed burning or a combination of both. Some areas may be left to regenerate naturally without site preparation. These activities will restore these sites to dry and very dry (xeric) oak forest and woodlands, moderately moist (mesic) oak forests, and dry and moderately moist (mesic) oak-pine forests.

Desired Outcome for Upland Deciduous forest Restoration Effort

1. Dry and Very dry (xeric) Oak Forest and Woodland Community

The dry and very dry (xeric) oak forest and woodland community type will be restored on the northern portion of the Bankhead National Forest. These areas will be characterized as mid- to late-successional forests. These forests are characterized as having canopies ranging from closed forest conditions to open woodland conditions, with occasional small gaps up to ½ acre in size. Dominant over story trees will include white oak, black oak, chestnut oak, scarlet oak, and post oak. The occurrence of dormant season fire in these areas, 1 or 2 times per decade, will restrict tree density and promote the growth of shade intolerant grasses, forbs, and shrubs in some areas and in other areas these forests will have a well developed shrub and mid-story canopy.

These forests will contribute a range of habitat conditions that vary from suitable to optimal for those species of plants and animals typically found in association with forests of these successional stages. Some representatives of the species typically found within this range of habitat conditions in the mid to late successional stages of deciduous forest include the hooded warbler, pileated woodpecker, cerulean warbler, white-tailed deer, eastern wild turkey and the eastern gray squirrel.

2. Moderately Moist (Mesic) Oak Forest and Dry and Moderately Moist (Mesic) Oak-Pine Forest Community

The moderately moist (mesic) oak forest and dry and moderately moist (mesic) oak-pint forest community types will be restored on the northern portion of the Bankhead National Forest. These areas will be characterized as mid- to late-successional forests.

These forests will have a continuous dominant canopy of medium-sized trees, with occasional small gaps up to ½ acre in size. Dominant over story trees will include northern hardwood, chestnut oak, black oak, scarlet oak, pignut hickory, mockernut hickory, shagbark hickory, loblolly pine, and shortleaf pine. American chestnut historically was a major species in this forest community. On dry sites, the occurrence of low intensity fire in these areas, 1 or 2 times per decade, will help maintain the oak component by eliminating fire-sensitive competitors and stimulate oak regeneration. On moderately moist (mesic) sites these forests will have a well-developed shrub and mid-story canopy.

These forests will contribute a range of habitat conditions that vary from suitable to optimal for those species of plants and animals typically found in association with forests of these successional stages. Some representatives of the species typically found within this range of habitat conditions in the mid to late successional stages of deciduous forest include the hooded warbler, pileated woodpecker, cerulean warbler, white-tailed deer, eastern wild turkey and the eastern gray squirrel.

Restoration Activities for Native Shortleaf/Bluestem Woodlands

There will be intermediate thinning of approximately 5,200 acres of loblolly pine forest to favor conversion to very dry (xeric) shortleaf/bluestem woodlands and very dry (xeric) pine-oak forest and woodlands. This action will also reduce short-term risks to SPB infestations and reduce forest fuel buildups.

The loblolly pine thinning program will reduce basal area to between 60 to 70 square feet per acre. Trees favored for retention in order of priority in these areas will include (1) shortleaf pine, (2) longleaf pine, (3) loblolly pine, and (4) dominant/codominant oaks/hickory. The favored hardwood species will include a variety of oak and hickory species. Consultation will be conducted with the U.S. Fish and Wildlife Service regarding coordination of restoration activities with Recovery Plans for Federally listed species. The top priority stands for thinning will be those between 15–45 years old, with high tree densities. It is proposed that all timber sale harvest options be available for this program.

The thinning will lower tree densities that will allow the development of understory, fire-dependent grasses and shrubs that are intolerant of shade. This thinning will precede future restoration activities that will gradually replace the existing loblolly pine with shortleaf pine as predominant species.

Artificial reforestation and site preparation will be conducted on approximately 2,000 acres of former loblolly pine forest impacted by SPB infestations. Site preparation may include mechanical treatment, prescribed burning or a combination of both. Shortleaf seedlings will be planted artificially to assure adequate stocking. In addition, prescribed burning will be utilized as an intermediate to help achieve the desired restoration. These activities will restore these sites to very dry (xeric) shortleaf/bluestem woodlands.

Desired Outcome of Shortleaf/Bluestem Woodland Community Restoration Effort

The very dry (xeric) shortleaf/bluestem woodland and very dry (xeric) pine-oak forest and woodland community types will be restored on the central portion of the Bankhead National Forest. These areas will be characterized as mid- to late-successional forests. These forests are characterized as having open woodland conditions, with occasional small gaps up to ½ acre in size. The dominant over story tree will be shortleaf pine. Other trees species that will be found at lower densities are: Virginia pine, loblolly pine, scarlet oak, chestnut oak, southern red oak, white oak, blackjack oak, and pignut hickory. The occurrence of dormant and growing season fire in these areas, 2 or 3 times per decade, will restrict tree density and promote the

growth of shade intolerant native grasses, forbs, and shrubs.

If maintained by fire, this portion of the forest will contribute a range of habitat conditions that vary from suitable to optimal for those species of plants and animals typically found in association with forests of these open conditions. Some representatives of the species typically within this range of habitat conditions in the native shortleaf and bluestem woodland include the prairie warbler, orchard oriole, northern bobwhite quail, white-tailed deer, and eastern wild turkey.

Restoration Activities for Native Longleaf/Bluestem Woodlands

There will be intermediate thinning of approximately 3,200 acres of loblolly pine forest to favor conversion to longleaf/bluestem woodlands, to reduce short-terms risks to SPB infestations, and to reduce forest fuel buildups.

The loblolly pine thinning program will reduce basal area to between 60 to 70 square feet per acre. These favored for retention in order of priority in these areas will include (1) longleaf pine, (2) shortleaf or loblolly pine, and (3) dominant/codominant oaks/hickory. The favored hardwood species will include a variety of oak and hickory species. Consultation will be conducted with the U.S. Fish and Wildlife Service regarding coordination of restoration activities with Recovery Plans for Federally listed species. The top priority stands for thinning will be those between 15–45 years old, with high tree densities. It is proposed that all timber sale harvest options be available for this program.

The thinning will lower tree densities that will allow the development of understory, fire-dependent grasses and shrubs that are intolerant of shade. This thinning will precede future restoration activities that will gradually replace the existing loblolly pine with longleaf pine as predominant species.

Artificial reforestation and site preparation will be conducted on approximately 800 acres of former loblolly pine forest impacted by SPB infestations. Site preparation may include mechanical treatment, prescribed burning or a combination of both. Longleaf seedlings will be planted artificially to assure adequate stocking. In addition, prescribed burning will be utilized as an intermediate treatment to help achieve the desired future conditions. These activities will restore these sites to very dry (xeric) longleaf/bluestem woodlands.

Desired Outcome of Longleaf/Bluestem Woodland Community Restoration Effort

The longleaf/bluestem woodland community types will be restored on the southern portion of the Bankhead National Forest. These areas will be characterized as mid- to late-successional forests. These forests are characterized as having open woodland conditions, with occasional small gaps up to ½ acre in size. The dominant over story tree will be longleaf pine. Other trees species that will be found at lower densities are: Virginia pine, loblolly pine, scarlet oak, chestnut oak, southern red oak, white oak, blackjack oak, and pignut hickory. The occurrence of dormant and growing season fire in these areas, 2 or 3 times per decade, will restrict tree density and promote the growth of shade intolerant native grasses, forbs, and shrubs.

These areas of the forest will contribute a range of habitat conditions for native species of plants and wildlife. This range of conditions will vary from suitable to optimal for those species of plants and animals typically found in association with forests of these open conditions. Maintenance by prescribed fire is necessary to have the optimal conditions. Some representatives of the wildlife species typically found within this range of habitat conditions in the native longleaf pine and bluestem woodlands include the prairie warbler, brown-headed nuthatch, red-cockaded woodpecker, northern bobwhite quail, white-tailed deer and eastern wild turkey.

G. Special Permit Needs

There are no special permits required from any State or Federal agencies in order to implement this project. Consultation with U.S. Fish and Wildlife Service as required by section 7 of the Endangered Species Act of 1973, as amended, will be conducted for all needed activities.

H. Lead Agency

The USDA Forest Service is the lead agency for this project. The Bankhead Ranger District requests that comments be as specific as possible for this proposal, and be sent to: District Ranger Glen Gaines, USDA, Forest Service, P.O. Box 278, Double Springs, AL 35553.

It is estimated that the draft EIS will be available for public comment by July 31, 2003. It is very important that those interested in this proposed action participate at this time. To be helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3)

In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewers' position and contentions: *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F.Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider them and respond to them in the FEIS.

I. Estimated date for FEIS

After the comment period ends on the DEIS, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by November 17, 2003. The responsible official will consider the comments, responses, environmental consequences discussed in the final supplement, applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 215. The responsible official for this project will be Glen Gaines, District Ranger for the Bankhead Ranger District, National Forests in Alabama at: P.O. Box 278, Double Springs, AL 35553.

Dated: May 17, 2002.

Glen D. Gaines,

District Ranger.

[FR Doc. 02–13069 Filed 5–23–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Hood/Willamette Resource Advisory Committee (RAC) Meeting

AGENCY: Forest Service, USDA.

ACTION: Meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee (RAC) will meet on Friday, June 21, 2002. The meeting is scheduled to begin at 9 a.m. and will conclude at approximately 4 p.m. The meeting will be held at the Salem Office of the Bureau of Land Management Office; 1717 Fabry Road SE; Salem, Oregon; (503) 375–5646. The tentative agenda includes: (1) Report on status of 2002 projects; (2) decision on overhead rate for 2003 projects; (3) presentation of 2003 Projects; and (4) public forum.

The Public Forum is tentatively scheduled to begin at 11 p.m. Time allowed for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the June 21st meeting by sending them to Designated Federal Official Donna Short at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Donna Short; Sweet Home Ranger District; 3225 Highway 20; Sweet Home, Oregon 97386; (541) 367–9220.

Dated: May 15, 2002.

Y. Robert Iwamoto,

Acting Forest Supervisor.

[FR Doc. 02–13039 Filed 5–23–02; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received on or Before: June 23, 2002.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Product/NSN: Pad, Scouring; 7920–00–171–1534.
NPA: Beacon Lighthouse, Inc., Wichita Falls, TX.
Contract Activity: General Services Administration.

Services

Service Type/Location: CD-ROM Replication—Program A890–M, Government Printing Office, Washington, DC.
NPA: Association for the Blind &Visually Impaired & Goodwill Industries of Greater Rochester,Rochester, NY.
Contract Activity: Government Printing Office, Washington, DC.
Service Type/Location: Commissary Shelf Stocking, Custodial & Warehousing, Eglin Air Force Base, FL.
NPA: Brevard Achievement Center, Inc., Rockledge, FL.
Contract Activity: Department of the Air Force, Eglin Air Force Base, FL.
Service Type/Location: Janitorial/Custodial, The Dalles Dam, The Dalles, OR.
NPA: Hood River Sheltered Workshop, Inc., Hood River, OR.
Contract Activity: Army Corps of Engineers, Portland, OR.
Service Type/Location: Packaging Service, Crane Division, Naval Surface Warfare Center, Crane, IN.
NPA: Knox County Association for Retarded Citizens, Inc., Vincennes, IN.
Contract Activity: Naval Surface Warfare Center, Crane, IN.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–13125 Filed 5–23–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 23, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 15, and March 29, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 F.R. 7130, and 15175) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a

substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Grounds Maintenance, Naval Undersea Warfare Center Division, Keyport, WA.
NPA: Skookum Educational Programs, Port Townsend, WA.
Contract Activity: Naval Undersea Warfare Center Division, Keyport, WA.
Service Type/Location: Switchboard Operation, Veterans Affairs Medical Center, Iowa City, IA.
NPA: Goodwill Industries of Southeast Iowa, Iowa City, IA.
Contract Activity: Veterans Affairs Medical Center, Iowa City, IA.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–13126 Filed 5–23–02; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request—Special Notice

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau, Commerce.

Title: American Community Survey.

Information: On May 1, 2002, the Census Bureau published a notice in the **Federal Register** notifying the public of its plans to conduct the American Community Survey starting in November 2002. In that notice, written comments and recommendations for the proposed information collection were to be sent within 30 days of publication to the desk officer's regular mail address at OMB. Because OMB is still experiencing delays in receiving regular mail (including first class and express mail) due to the events of last fall, comments on this proposed information collection request should be faxed to Susan Schechter, OMB desk officer, at (202) 395–7245. The due date for these comments to be faxed to OMB has been extended to June 7, 2002.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202)482–3129, Department of Commerce, room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent via fax by June 7, 2002 to Susan Schechter, OMB Desk Officer, (202) 395–7245.

Dated: May 20, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–13083 Filed 5–23–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2002 Economic Census Covering the Manufacturing Sector.

Form Number(s): MA–10000, MC–31000 thru MC–33000.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 940,200 hours in FY 2003.

Number of Respondents: 260,000.

Avg Hours Per Response: 3 hours and 37 minutes.

Needs and Uses: The 2002 Economic Census Covering the Manufacturing Sector will use a mail canvass, supplemented by data from Federal administrative records, to measure the economic activity of approximately 400,000 establishments in this sector of the economy classified in the North American Industry Classification System (NAICS). The manufacturing sector comprises establishments engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products. The assembling of component parts of manufactured products is considered manufacturing, except in cases where the activity is appropriately classified in Sector 23, Construction. The economic census will produce basic statistics by industry for number of establishments, payroll, employment, value of shipments, value added, capital expenditures, depreciation, materials consumed, selected purchased services, electric energy used and inventories held.

The economic census is the primary source of facts about the structure and functioning of the Nation's economy and features unique industry and geographic detail. Economic census statistics serve as part of the framework for the national accounts and provide essential information for government, business, and the general public. The Federal Government (*i.e.*, Bureau of Economic Analysis, Bureau of Labor Statistics) uses information from the economic census as an important part of the framework for the national income and product accounts, input-output tables, economic indexes, and other composite measures that serve as the factual basis for economic policymaking, planning, and program administration. Further, the census provides sampling frames and benchmarks for current surveys which track short-term economic trends, serve as economic indicators, and contribute critical source data for current estimates of the gross domestic product. State and local governments rely on the economic census as a unique source of comprehensive economic statistics for small geographic areas for use in policymaking, planning, and program administration. Finally, industry, business, academia, and the general public use information from the economic census for evaluating markets, preparing business plans, making business decisions, developing economic models and forecasts, conducting economic research, and establishing benchmarks for their own sample surveys.

Affected Public: Businesses or other for-profit.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 131 and 224.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of

Commerce, room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: May 20, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–13084 Filed 5–23–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

2002 Business Expenses Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 23, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Sheldon G. Ziman, U. S. Census Bureau, Room 1183, Building 3, Washington DC 20233–6400 (301–457–3315), or via the Internet at *sheldon.g.ziman@census.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The business expenses survey is conducted as part of the economic census, which is required by law to be taken every five years under Title 13 of the United States Code. The 2002 Business Expenses Survey will be conducted on a sample basis for the collection of data on business operating expenses to complement data on sales and inventories compiled in current surveys. Together, these data are benchmarked to the economic census and are used to compile measures of value produced for selected industries. The collection of business expenses data is required for reliable measurement of the United States economy. As such, the Bureau of Economic Analysis (BEA), producer of gross domestic product estimates, is the primary user of these data. The BEA uses the expenses data for developing the national income and product accounts, input-output tables, and economic indexes, and to fill previously identified critical gaps in underlying data in these accounts.

Industrial sectors covered by the survey include wholesale trade, retail trade, and most of the transportation and service sectors, as based on the 1997 North American Industry Classification System (NAICS).

The information collected will produce statistics by kind of business on operating expenses such as labor costs, depreciation, rent, materials and supplies, utilities, and purchased services such as advertising, repairs, legal, accounting, and computer services. The primary strategy for minimizing burden in this survey is the use of sampling and sub-sampling, and where possible, supplementing the Census Bureau's business annual surveys as the data collection vehicle.

II. Method of Collection

The 2002 Business Expenses Survey will be conducted using mailout/mailback procedures, where possible supplementing the Census Bureau's business annual surveys. The sample to be used was previously created for the business current surveys, covering wholesale trade, retail trade, and most of the transportation and service industrial sectors. Most multi-location companies included in the sample will receive a separate form to consolidate their data for each unique kind of business operated. Only employer businesses will be mailed. Data for non-employers for selected industries will be estimated based on administrative records. The questionnaires will be mailed from the Census Bureau's National Processing Center in Jeffersonville, Indiana. Three periodic mail follow-ups and a telephone follow-up will be conducted to minimize statistical error due to nonresponse. Upon closeout of data collection, the response data will be edited and reviewed.

III. Data

OMB Number: Not available.

Form Number: Not available. Some of the forms to be used to collect information for the 2002 Business Expenses Survey will be associated with concurrent business annual surveys of wholesale, retail, and selected service businesses. For industries not covered in the annual surveys, such as selected finance, insurance, real estate, transportation, and education services, unique forms will be used. Requests for information on the proposed content of the forms should be directed to Sheldon G. Ziman, U. S. Census Bureau, Room 1183, Building 3, Washington DC 20233–6400 (301–457–3315) or via the Internet at *sheldon.g.ziman@census.gov*.

Type of Review: Regular review.

Affected Public: Incorporated and non-incorporated businesses, and for profit and not for profit institutions or organizations

Estimated Number of Respondents: 90,000 employer reporting units.

Estimated Time Per Response: The average for multi-location firms is 2.2 hours and the average for single-location firms is 1.2 hours.

Estimated Total Annual Burden Hours: 160,000 hours.

Estimated Total Annual Cost to Respondents: $3.1 million.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 131, 193, 195, and 224.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 20, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–13085 Filed 5–23–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–832]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil; Correction

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 24, 2002.

SUMMARY: The notice appearing in 67 FR 18586, on Tuesday, April 16, 2002, should be disregarded because it duplicates the notice appearing in 67 FR 18165, on Monday, April 15, 2002. Therefore, the effective date of the preliminary determination is April 15, 2002.

FOR FURTHER INFORMATION CONTACT: Vicki Schepker or Christopher Smith, at (202) 482–1756 or (202) 482–1442, respectively; AD/CVD Enforcement Group II Office 5, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: May 20, 2002

Bernard T. Carreau,

Deputy Assistant Secretary for Group II, Import Administration.

[FR Doc. 02–13150 Filed 5–23–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–870]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 24, 2002.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or Amy Ryan at (202) 482–3208 and (202) 482–0961, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (''Department'') regulations are to the regulations at 19 C.F.R. Part 351 (2001).

Final Determination

We determine that certain circular welded carbon-quality steel pipe (''pipe'') from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the ''Continuation of Suspension of Liquidation'' section of this notice.

Case History

The preliminary determination in this investigation was published on December 31, 2001. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe From the People's Republic of China*, 66 FR 67500 (''*Preliminary Determination*''). This investigation covers three mandatory respondents, WeiFang East Steel Pipe Co., Ltd. (''WeiFang''); Tianjin Shuang Jie Steel Pipe Co., Ltd. (''Shuang Jie''); and Baosteel Group International Trade Corporation (''Baosteel''). In addition, there are five voluntary respondents, Tai Feng Qiao Metal Products Co. (''Tai Feng Qiao''); Pangang Group International Economic and Trade Corporation (''Pangang International''); ZheJiang JingZhou HuaLong Petroleum Corrosion-Resistant Steel Pipe Co., Ltd. (Jinzhou''); Walsall Steel Pipe Industrial Co., Ltd. (''Walsall''); China MinMetals ZhuHai Co., Ltd. (''ZhuHai''). Petitioners in this investigation are Allied Tube & Conduit Corporation, Century Tube Corporation, IPSCO Tubulars, Inc., Laclede Steel, LTV Copperweld, Maverick Tube Corporation, Northwest Pipe Company, Sharon Tube Company, Western Tube & Conduit Corporation, Wheatland Tube Company and the United Steelworkers of America, AFL-CIO (collectively, ''Petitioners'').

On January 16, 2002, pursuant to a request from Shuang Jie, the Department postponed the final determination until May 15, 2002. *See Notice of Postponement of Final Determination of Antidumping Duty Investigation: Certain Circular Welded Carbon-Quality Steel Pipe From the People's Republic of China*, 67 FR 2189 (January 16, 2002). The Department verified the responses to the antidumping questionnaire of Baosteel and one of its suppliers from January 16–19, 2002; WeiFang from February 3–5, 2002; and Shuang Jie from February 7–9, 2002. After releasing verification reports, we invited parties to comment on these reports and our *Preliminary Determination*. We received comments from petitioners and all three mandatory respondents on March 20, 2002 and rebuttal briefs from the same parties on March 25, 2002. At the requests of Shuang Jie and petitioners, a hearing was held on April 15, 2002.

Based on our analysis of verification findings and the comments received, we have made changes in the margin calculation. Therefore, the final determination differs from the *Preliminary Determination*.

Period of Investigation

The period of investigation (''POI'') is October 1, 2000 through March 31, 2001. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (*i.e.* May 24, 2001). *See* 19 C.F.R. 351.204(b)(1).

Scope of Investigation

The products covered by this investigation are certain welded carbon-quality steel pipes and tubes, of circular cross-section, with an outside diameter of 0.372 inches (9.45 mm) or more, but not more than 16 inches (406.4 mm), regardless of wall thickness, surface finish (black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (ASTM, proprietary, or other), generally known as standard pipe and structural pipe.

Standard pipes and tubes are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may carry liquids at elevated temperatures but may not be subject to the application of external heat. It may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells, and for structural applications in general construction. It primarily is made to American Society for Testing and Materials (ASTM) A–53, A–135, and A–795 specifications, but can also be made to the British Standard (BS)-1387 specification.

Structural pipe is intended for use in the construction of bridges and buildings, and general structural applications. It also can be used for making steel scaffolding and for piling applications. It primarily is made to ASTM A–500 and A–252 specifications.

Hence, specifically included within the scope of this investigation are products stenciled to the ASTM standards A–53, A–135, A–795, A–120, A–500, A–252, or their equivalents. Standard and structural pipe products may also be produced to proprietary specifications rather than to industry standard. This is often the case with fence tubing, for example.

The scope does not include boiler tubes, pressure tubing, mechanical tubing, finished conduit, oil country tubular goods (OCTG), and line pipe. However, with regard to these excluded products, if petitioners or other interested parties provide to the Department reasonable grounds to believe or suspect that the products are being used in a standard or structural application, the Department may instruct the U.S. Customs Service to require end-use certifications. In addition, line pipe meeting the American Petroleum Institute (API) line pipe is excluded from the scope of this investigation, and any resultant antidumping duty order, if covered by the scope of another antidumping duty order from the same country.

The standard pipe products that are the subject of this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.30.10 and 7306.30.50. This investigation also covers dual-certified A–53/API or single certified pipe that enters the United States if its is used in, or intended for use in, standard pipe or structural pipe applications. Such certified pipe may include API–5L or API–5L X–42 pipe. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under investigation is dispositive.

Non-Market Economy

The Department has treated the PRC as a non-market economy (''NME'') country in all its past antidumping investigations. *See Notice of Final Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 66 FR 50608 (October 4, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Folding Gift Boxes from the People's Republic of China*, 66 FR 58115 (November 20, 2001). A designation as a NME country remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. The respondents in this investigation have not requested a revocation of the PRC's NME status. Therefore, we have continued to treat the PRC as a NME in this investigation. For further details, see the *Preliminary Determination*.

Separate Rates

In our *Preliminary Determination*, we found that the mandatory respondents, Baosteel, Shuang Jie and WeiFang, as well as the voluntary respondents, ZhuHai, Tai Feng Qiao, Walsall, Pangang International and Jinzhou met the criteria for the application of separate, company-specific antidumping duty rates. We have not received any other information since the *Preliminary Determination* which would warrant reconsideration of our separates rates determination with respect to these companies. For a complete discussion of the Department's determination that the respondents are entitled to separate rates, see the *Preliminary Determination*.

The PRC-Wide Rate

In the *Preliminary Determination*, we found that the use of adverse facts available for the PRC-wide rate was appropriate for other exporters in the PRC based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the Chinese government. The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from Baosteel International, Tianjin Shuang Jie, WeiFang, Zhuhai, Tai Feng Qiao, Walsall, Pangang International, and Jinzhou. We received no comments on this decision and for this final determination, we continue to believe that use of adverse facts available for the PRC-wide rate is appropriate. For further discussion, *see Preliminary Determination*.

Margins for Cooperative Exporters Not Selected

For our final determination, consistent with our *Preliminary Determination*, we have calculated a weight-averaged margin for ZhuHai, Tai Feng Qiao, Walsall, Pangang International, and Jinzhou based on the rates calculated for those exporters that were selected to respond in this investigation, excluding any rates that are zero, *de minimis* or based entirely on adverse facts available. *See Preliminary Determination*. Companies receiving this rate are identified by name in the ''Continuation of Suspension of Liquidation'' section of this notice.

Surrogate Country

For purposes of the final determination, we continue to find that India remains the appropriate surrogate country for the PRC. We received comments from a respondent in its brief, which are discussed in the accompanying *Issues and Decision Memorandum for the Antidumping Duty Investigation of Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China: 10/1/00–03/31/01* at Comments 1 and 2 (May 15, 2002) (''*Issues and Decision Memorandum*''). For further discussion and analysis regarding the surrogate country selection for the PRC, see the *Preliminary Determination* and the *Memorandum to Edward C. Yang from Robert Bolling on Surrogate Country Selection*, on file in the Department's Central Records Unit, Room B–099 of the Main Department of Commerce Building.

Analysis of Comments Received

All issues raised in the case briefs by parties to this investigation are addressed in the *Issues and Decision Memorandum*, which is adopted by this notice. A list of the issues which parties raised, and to which we have responded, all of which are in the *Issues and Decision Memorandum*, is attached to this notice as an Appendix. A complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum, is on file in the Central Records Unit. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Internet at http://ia.ita.doc.gov/. The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Changes Since the Preliminary Determination

Based on our findings at verification, and analysis of comments received, we have made corrections to certain respondents' reported factor usage rates and surrogate values . We have also corrected certain clerical errors in our *Preliminary Determination*. These changes are discussed in the relevant sections of the *Issues and Decision Memorandum*, the *Memorandum to the File: Factors Valuation for Baosteel, Shuang Jie and WeiFang* and the respective Analysis Memoranda for the Final Determination for Shuang Jie, Baosteel and Weifang (May 15, 2002).

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the mandatory respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents. For changes from the *Preliminary Determination* as a result of verification, see the respective analysis memoranda.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing the Customs Service to continue to suspend liquidation of entries of subject merchandise from the PRC (except certain merchandise exported by Baosteel and Weifang) that are entered, or withdrawn from warehouse, for consumption on or after December 31, 2001. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice.

Under the Department's NME methodology, the rate for each mandatory exporter is based on a comparison of the exporter's U.S. price and NV based on the factors of production of a specific producer (which may be a different party). Therefore, the exclusion of the above mentioned companies from an antidumping duty order (should one be issued) applies only to subject merchandise exported by Baosteel and produced by its suppliers during the period of investigation and to subject merchandise produced and exported by Weifang. As Baosteel's supplier names are proprietary, they have been identified as Supplier A and Supplier B for this public document. However, the supplier names have been identified in *Analysis Memo for the Preliminary Determination of Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China (''PRC''): Baosteel* (May 15, 2002). Merchandise that is exported by Baosteel or Weifang, but manufactured by producers not noted below for that exporter will be subject to the order, if one is issued. *See Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China*, 62 FR 916 (February 28, 1997). Entries of such merchandise will be subject to the ''China-wide'' rate.

CERTAIN CIRCULAR WELDED CARBON-QUALITY STEEL PIPE

Producer/Manufacturer/Exporter	Weight-Averaged Margin (Percent)
Baosteel/Supplier A or Supplier B	0
Shuang Jie	3.87
WeiFang	0
Tai Feng Qiao	3.87
ZhuHai	3.87
Pangang International	3.87
Jinzhou	3.87
Walsall	3.87
PRC-Wide	36.42

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 15, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

Comment 1: Market Economy Purchases from Country X and Country Y

Comment 2: Valuing a Respondent's Factors of Production using the other Respondent's Market Economy Purchases

Comment 3: Surrogate Value for Hot-Rolled Coil

Comment 4: Calculation of Zinc Usage Ratio

Comment 5: Surrogate Companies used for the Financial Ratios Calculation

Comment 6: Iran's Market Status in the Surrogate Value Calculation

Comment 7: Treatment of Foreign Inland Freight and Brokerage and Handling in Normal Value Calculation

[FR Doc. 02–13147 Filed 5–23–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine from the People's Republic of China: Initiation of Antidumping New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has received a timely request from Tianjin Tiancheng Pharmaceutical Co., Ltd. (Tiancheng) to conduct a new shipper review of the antidumping duty order on glycine from the People's Republic of China (PRC). In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(d) of the Department's regulations, we are initiating this new shipper review.

EFFECTIVE DATE: May 24, 2002.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2312.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR Part 351 (2002).

Background

On March 29, 2002, the Department received a timely request from Tiancheng, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(c), for a new shipper review of this antidumping duty order on glycine from the People's Republic of China (''PRC''), which has a March anniversary date. On April 29, 2002, the Department returned the submission because it did not meet the filing requirements of section 351.304(c) of the Department's regulations. See the Memorandum to the File entitled ''Initiation of New Shipper Review of Glycine from the People's

Republic of China,'' (May 17, 2002), which is on file in the Central Records Unit of the Department of Commerce. We requested that Tiancheng refile its request within two days in accordance with section 351.304(c) of the regulations. On May 1, 2002, Tiancheng properly filed its request for a new shipper review.

As required by 19 CFR 351.214(b)(2)(i), (ii), and (iii)(A), Tiancheng has certified that it is both an exporter and producer of glycine. It has also certified that it did not export glycine to the United States during the period of investigation (''POI''), and that it has never been affiliated with any exporter or producer which exported glycine to the United States during the POI. *See* ''Glycine from the People's Republic of China; Request for New Shipper Administrative Review,'' Exhibit 1, (March 29, 2002). Tiancheng has further certified that its export activities are not controlled by the central government of the PRC, pursuant to the requirements of 19 CFR 351.214(b)(2)(iii)(B). *See Id*. Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv)(A), Tiancheng submitted documentation establishing the date of its first and only shipment of the subject merchandise to the United States, the date of entry of that first shipment, the volume of that shipment, and the date of the first sale to an unaffiliated customer in the United States. *See Id*. at Exhibit 2.

Initiation of Review

Because Tiancheng has provided the required certifications and documentation under section 351.303(g) of the regulations, we are initiating a new shipper review of the antidumping duty order on glycine from the PRC in accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d).

In accordance with 19 CFR 351.214(g)(1)(i)(A) of the Department's regulations, the period of review (POR) for a new shipper review, filed in the the annual anniversary month, will be the one-year period immediately preceding the anniversary month. Therefore, the POR for this new shipper review is:

Antidumping duty proceeding	Period to be reviewed
Glycine from the PRC: ... Tianjin Tiancheng Pharmaceutical Tiancheng) Co., Ltd	03/01/01–02/28/02

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by Tiancheng. This action is in accordance with 19 CFR 351.214(e).

The interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: May 17, 2002

Joseph A. Spetrini,

Deputy Assistant Secretaryfor Import Administration, Group III.

[FR Doc. 02–13149 Filed 5–23–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–856]

Synthetic Indigo from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On March 7, 2002, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on synthetic indigo from the People's Republic of China with respect to China Jiangsu International Economic Technical Cooperation Corp., and Wonderful Chemical Industrial Ltd./ Jiangsu Taifeng Chemical Industry. The period of review is September 15, 1999, through May 31, 2001. No interested party submitted comments on and we have made no changes to our preliminary results. Therefore, the final results do not differ from the preliminary results. The final margin is listed below in the ''Final Results of Review'' section of this notice.

EFFECTIVE DATE: May 24, 2002.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4136.

SUPPLEMENTARY INFORMATION:

The Applicable Statute:

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the ''Department's'') regulations are to 19 CFR Part 351 (2001).

Background

This review covers the exporters China Jiangsu International Economic Technical Cooperation Corp. (CJIETCC) and Wonderful Chemical Industrial Ltd./Jiangsu Taifeng Chemical Industry (Wonderful/Jiangsu Taifeng).

On March 7, 2002, the Department of Commerce published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on synthetic indigo from the People's Republic of China (PRC) (67 FR 10386) (*Preliminary Results*).

We invited parties to comment on the preliminary results of the review. No interested party submitted comments. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Order

The products subject to this order are the deep blue synthetic vat dye known as synthetic indigo and those of its derivatives designated commercially as ''Vat Blue 1.'' Included are Vat Blue 1 (synthetic indigo), Color Index No. 73000, and its derivatives, pre-reduced indigo or indigo white (Color Index No. 73001) and solubilized indigo (Color Index No. 73002). The subject merchandise may be sold in any form (*e.g.*, powder, granular, paste, liquid, or solution) and in any strength. Synthetic indigo and its derivatives subject to this order are currently classifiable under subheadings 3204.15.10.00, 3204.15.40.00 or 3204.15.80.00 of the *Harmonized Tariff Schedule of the United States*(HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Period of Review

The period of review covers the period September 15, 1999, through May 31, 2001.

Final Results of the Review

Our final results remain unchanged from the preliminary results. As discussed in the *Preliminary Results*, neither CJIETCC or Wonderful/Jiangsu Taifeng responded to the Department's questionnaire. Accordingly, neither of these companies established their entitlement to a separate rate in this review and, therefore, are presumed to be part of the PRC non-market economy (NME) entity and, as such, are subject to the PRC country-wide rate. Thus, the following margin applies for the period September 15, 1999, through May 31, 2001, for those imports where the exporter is CJIETCC or Wonderful/Jiangsu Taifeng:

Manufacturer/producer/exporter	Margin Percent
PRC-wide Rate	129.60

Assessment Rates and Cash Deposit Requirements

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. The cash deposit rate for all shipments by CJIETCC or Wonderful/Jiangsu Taifeng of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, will be the PRC-wide rate of 129.60 percent, as provided for by section 751(a)(1) of the Act. The cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding for which there was no request for administrative review will continue to be the rate assigned in that segment of the proceeding. The cash deposit rate for the PRC NME entity will continue to be 129.60 percent, and the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will continue to be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213.

Dated: May 17, 2002

Faryar Shirzad,

Assistant Secretaryfor Import Administration.

[FR Doc. 02–13148 Filed 5–23–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 020503108–2108–01]

Notice of Intent To Update Existing Electron Ionization Mass Spectral Library

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The National Institute of Standards and Technology announces its intent to update its electron ionization mass spectral library. The update will increase the number of spectra from 130,000 to approximately 175,000. Interested parties are invited to submit comments to the address below.

DATES: Comments must be received by June 24, 2002.

ADDRESSES: Comments should be sent to the attention of Dr. Stephen Stein at the National Institute of Standards and Technology, Mail Stop 8380, 100 Bureau Drive, Gaithersburg, MD, 20899–8520.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Stein by writing to the above address or by e-mail at *stephen.stein@nist.gov* or by telephone at (301) 975–2444.

SUPPLEMENTARY INFORMATION: As part of its responsibilities under Title 15 U.S.C. 290 to collect, evaluate and publish high quality Standard Reference Data (SRD), NIST creates and maintains evaluated SRD databases. One such database is the Mass Spectral Database which is an evaluated data collection containing electron ionization mass spectra for discrete chemical substances. The database is primarily used to aid in the identification of chemical compounds by providing a source for reference spectra for comparison to spectra acquired by commercial instruments, especially spectra generated by gas chromatography/mass spectrometry. For each spectrum, auxiliary information for chemical identification is provided, including chemical names, formulas, chemical structures and related information. The planned update will increase the number of spectra from 130,000 to approximately 175,000 spectra, representing a wide variety of substances. The updated spectra will provide wider coverage of compounds and a higher level of accuracy. This will increase the confidence of users of the library in identifying chemical substances. We invite comments concerning this update

Dated: May 20, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–13167 Filed 5–23–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Computer System Security And Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board (CSSPAB) will meet Tuesday, June 11, 2002, from 9 a.m. until 4 p.m., Wednesday, June 12, 2002, from 8:30 a.m. until 4 p.m. and on Thursday, June 13, 2002, from 8:30 a.m. until 3 p.m. All sessions will be open to the public. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the Board's activities are available at *http://csrc.nist.gov/csspab/*.

DATES: The meeting will be held on June 11, 2002, from 9 a.m. until 4 p.m., June 12, 2002, from 8:30 a.m. until 4 p.m., and June 13, 2002, from 8:30 a.m. until 3 p.m.

ADDRESSES: The meeting will take place at the National Security Agency's National Cryptologic Museum, Colony 7 Road, Annapolis Junction, Maryland.

Agenda

—Welcome and Overview

—Review and Approval of CSSPAB Privacy Report

—Updates on Recent Computer Security Legislation

—Update by OMB on Privacy and Security Issues

—Briefing on Good Baseline Security Practices

—Briefing on Digital Millennium Copyrights Act

—Review of CSSPAB Work Plan Priorities for 2002 and Planning for Beyond

—Public Participation

—Agenda Development for September 2002 CSSPAB meeting

—Wrap-Up

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the CSSPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees no later than June 7, 2002. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Dr. Fran Nielsen, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3669.

Dated: May 20, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–13168 Filed 5–23–02; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051502B]

Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT); Summer Workshop

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Advisory Committee to the U.S. Section to ICCAT announces a summer workshop to evaluate historical landings of Atlantic bigeye, albacore, and yellowfin tunas and to assist in developing a program to improve statistical reporting for these species. The Advisory Committee will also meet with the Status Review Team (SRT) for the petition to list white marlin under the Endangered Species Act (ESA) and to provide information to the SRT relative to the five ESA listing criteria.

DATES: The workshop will be open to the public and will be held on June 10, 2002, from 10 a.m. to 4:15 p.m. and on June 11, 2002, from 8:45 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held at the Hilton Hotel Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Erika Carlsen at (301) 713–2276.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in open session to review and discuss (1) NMFS efforts to-date to address bigeye, albacore, and yellowfin tunas data issues, (2) data inventories for bigeye, yellowfin, and albacore tunas on a state-by-state basis, (3) approaches to data monitoring and reporting for bigeye, albacore, and yellowfin tunas, (4) the process and timeline associated with the petition to list white marlin on the ESA, (5) white marlin stock assessment results, and (6) information relating to white marlin with respect to the ESA listing factors.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Erika Carlsen at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: May 20, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–13146 Filed 5–23–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

May 20, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 24, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 59409, published on November 28, 2001.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 20, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 21, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on May 24, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	732,265 dozen.
335	393,605 dozen.
336/636	689,167 dozen.
341	3,591,911 dozen.
347/348	3,773,933 dozen.
363	39,883,802 numbers.
638/639	2,637,039 dozen.
641	1,601,978 dozen.
645/646	619,279 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
J. Hayden Boyd,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–13079 Filed 5–23–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

May 20, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 29, 2002.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 67 FR 870, published on January 8, 2002.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 20, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 3, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Cambodia and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on May 29, 2002, you are directed to adjust the limits for the following categories, as provided for in the agreement between the Governments of the United States and Cambodia:

Category	Adjusted twelve-month limit [1]
331/631	1,045,003 dozen pairs.
334/634	232,844 dozen.
335/635	89,028 dozen.
338/339	3,855,021 dozen.
340/640	1,027,252 dozen.
345	128,748 dozen.
347/348/647/648	4,323,388 dozen.
352/652	756,852 dozen.
445/446	90,050 dozen.
638/639	1,232,701 dozen.
645/646	243,660 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
J. Hayden Boyd,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 02–13080 Filed 5–23–02; 8:45 a.m.

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

Time and Date: 10 a.m., Thursday, May 30, 2002.

Place: 1155 21st Street, NW., Washington, DC, Room 1000.

Status: Open.

Matters to be Considered: Securities Futures Products Rulemakings.

CONTACT PERSON FOR FURTHER INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–13194 Filed 5–21–02; 4:58 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Public Law 92–463, The Federal Advisory Committee Act, this announces the forthcoming working group meeting:

Name of Committee: Armed Forces Epidemiological Board (AFEB).

Dates of Meeting: June 18, 2002.

Time: 7:30 a.m.–4:30 p.m.

Proposed Agenda: The purpose of the meeting is to make recommendations on the health risk of low-level phased array radio frequency energy emissions, specifically risk associated with the PAVE PAWS radar site at the Massachusetts Military Reservation.

As part of the deliberations, the working group of the AFEB will travel to the Massachusetts Military Reservation. The meeting location will be at the Massachusetts Military Reservation, Building 1204, Camp Edwards, MA 02542.

FOR FURTHER INFORMATION CONTACT: Lt. Col. James R. Riddle, Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, Virginia 22041–3258, (703) 681–8012/3.

SUPPLEMENTARY INFORMATION: Any interested person may file statements with the committee to be considered at the time and in the manner permitted by the committee.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–13041 Filed 5–23–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Reserve Officers' Training Corps Program Subcommittee; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) The Federal Advisory Committee Act (5 U.S.C., App. 2), announcement is made of the following meeting:

Name of Committee: Reserve Officers' Training Corps (ROTC) Program Subcommittee.

Dates of Meeting: June 25–28, 2002.

Time: 8 a.m.–5 p.m. (June 25, 2002), 8 a.m.–12 p.m. (June 26, 2002), 8 a.m.–5 p.m. (June 27, 2002).

Location: Fort Lewis, Tacoma, WA.

Proposed Agenda: Review and discuss status of Army ROTC since the July 2001 meeting, held at the Pentagon, Washington, DC, and tour and observe ROTC cadet training at the National Advanced Leadership Camp (NALC), Fort Lewis, WA.

FOR FURTHER INFORMATION CONTACT: Commander, U.S. Army Cadet Command, ATTN: ATCC–TT (Mrs. Johnson), Fort Monroe, VA 23651. Telephone number is (757) 788–4586.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–13047 Filed 5–23–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Lateral Visual Field Testing Device

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention described in U.S. Patent Application no. 60/288,925 entitled ''Lateral Visual Field Testing Device (LVFT),'' filed May 7, 2001. The United States Government, as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The LVFT is intended to test peripheral visual awareness of the lateral visual fields in a complex environment where multitasking is the norm.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–13046 Filed 5–23–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Antibodies Against Type A Botulinum Neurotoxin

AGENCY: Department of the Army, DOD

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/465,276 entitled ''Antibodies Against Type A Botulinum Neurotoxin,'' filed December 16, 1999. The United States Government, as represented by the Secretary of the Army has rights in this invention.

ADDRESSES: Commander, U.S. army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Antibodies for binding epitopes of BoNT/A and hybridomas which produce such antibodies are described. The antibodies of the present invention can be used in a method for detecting BoNT/A in a sample and/or in a method for purifying BoNT/A from an impure solution. In addition, the antibodies can to be used for passive immunization against BoNT/A intoxication or as intoxication therapy. Another aspect of the invention is a kit for detecting BoNT/A in a sample.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–13045 Filed 5–23–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement for the ACME Basin B Discharge Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), Jacksonville District intends to prepare an integrated Project Implementation Report/Draft Environmental Impact Statement (PIR/DEIS) for the ACME Basin B Discharge Project. The study is a cooperative effort between the Corps and the South Florida Water Management District (SFWMD), which is also a cooperating agency for this DEIS. One of the recommendations of the final report of the Central & South Florida (C&SF) Comprehensive Review Study (Restudy) was the implementation of Other Project Elements (OPE) including the ACME Basin B Discharge Project. This project is intended to provide water quality treatment and possible temporary storage of stormwater for the Acme basin within the Village of Wellington prior to discharge to the Arthur R. Marshall Loxahatchee National Wildlife Refuge. Excess water may be used to meet water supply demands in central and southern Palm Beach County. This project is a component of the Comprehensive Everglades Restoration Plan, a multi-year effort to restore the greater Everglades ecosystem while providing water supply and other water-related benefits to South Florida over many decades.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Tarr, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL, 32232–0019, by email *bradley.a.tarr@usace.army.mil,* or by telephone at 904–232–3582.

SUPPLEMENTARY INFORMATION:

a. Authorization: The authority for this project is contained within the Water Resources Development Act (WRDA) 2000. The ''Design Agreement between the Department of the Army and the SFWMD for the Design of Elements of the Comprehensive Plan for the Everglades and South Florida Ecosystem Restoration Project'' contains additional guidance.

b. Study Area: The study are, including the wetland and/or chemical treatment area and/or storage impoundment area, includes the entire 8,680-acre Acme Basin B, located adjacent to the Loxahatchee National Wildlife Refuge in Palm Beach County.

c. Project Scope. The Acme Bsasin B project may include the construction of a wetland or chemical treatment area and a storage reservoir adjacent to the Refuge located in Palm Beach County. The final size, depth and configuration of these facilities will be determined through more detailed planning and design.

The purpose of this feature is to provide water quality treatment and possible stormwater attenuation for runoff from Acme Basin B prior to discharge to the Arthur R. Marshall Loxahatchee National Wildlife Refuge or an alternative location. In the event that excess water (above the amount needed by the natural system) is available, an alternative discharge location will be determined.

The study will evaluate alternatives based on their ability to improve water deliveries to the natural system, manage agricultural and urban water supplies, protect and conserve water resources, protect or restore fish and wildlife and their associated habitat, restore and manage wetland and associated upland ecosystems, sustain economic and natural resources, improve water quality, and other performance criteria being developed by the Project Delivery Team.

d. Preliminary Alternatives: Formulation of alternative plans will involve the selection of the most suitable size, depth, and configuration of facilities through detailed planning and design.

The Environmental Impact Statement (EIS) evaluation of the project will include an evaluation of adverse environmental impacts, including but not limited to, water quality, socio-economic, archaeological and biological. In addition to adverse impacts, the evaluation will also focus on how well the plans perform with regard to specific performance measures.

e. Issues: The EIS will address the impacts of pumping stormwater runoff from ACME Basin B into a wetland treatment area, then into a storage reservoir prior to discharging into the Loxahatchee National Wildlife Refuge. If water quality treatment criteria is not met then water will be discharged into one of two alternative locations: the Palm Beach County Agricultural Reserve Reservoir or the combination above ground and in-ground reservoir area located adjacent to the L–8 Borrow Canal and north of the C–51 Canal.

The EIS will also address environmental issues, water quality; impacts to the estuaries; flood protection; aesthetics and recreation; fish and wildlife resources, including protected species; cultural resources; and other impacts identified through scoping, public involvement, and interagency coordination.

f. Scoping: A scoping letter and public workshops will be used to invite comments on alternatives and issues from federal, State, and local agencies, affected Indian tribes, and other interested private organizations and individuals. The next public workshop is scheduled for 22 May 2002; at the South Florida Water Management District headquarter, located at 3301 Gun Club Road, West Palm Beach, Florida. The meeting will begin at 6:30 p.m. and continue to 10 p.m.

Other public meetings will be held over the course of the study; the exact location, dates, and times will be announced in public notices and local newspapers.

g. DEIS Preparation: The integrated draft PIR, which will include a DEIS, is currently scheduled for publication in May 2003.

Dated: May 8, 2002.

George M. Strain,

Acting Chief, Planning Division.

[FR Doc. 02–13043 Filed 5–23–02; 8:45 am]

BILLING CODE 3710–AS–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Montauk Point Storm Damage Reduction Project, Town of East Hampton, Suffolk County, Long Island, NY

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), New York District, is preparing a Draft Environmental Impact Statement (DEIS) to ascertain compliance with and to lead to the production of a National Environmental Policy Act (NEPA) document in accordance with the President's Council of Environmental Quality (CEQ) Rules and Regulations, as defined and amended in 40 Code of Federal Regulations (CFR), parts 1500–1508, USACE principals and guidelines as defined in Engineering Regulation (ER) 1105–2–100, and other applicable Federal and State environmental laws for the proposed Storm Damage Reduction Project at the Montauk Point Lighthouse in Montauk, New York. The study area consists of the Montauk Point Lighthouse bluff in the Town of East Hampton, Long Island, New York.

FOR FURTHER INFORMATION CONTACT: Christopher Ricciardi, Project Archaeologist, Planning Division, U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, Room 2131, New York, New York, 10278–0090 at (212) 264–0204 or at *christopher.g.ricciardi@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This study is authorized by a U.S. House of Representatives Resolution adopted May 15, 1991 to provide, in part, storm damage protection for the bluff and lighthouse.

1. A public scoping meeting was held in November of 2001 and the results were collected in the Public Scoping Document. These results are available for review and additional scoping comments. All results from public and agency scoping coordination will be addressed in the DEIS. Parties interested in receiving the Scoping Document should contact Christopher Ricciardi at the above address.

2. A DEIS is due for completion by March 2003.

3. Federal agencies interested in participating as a Cooperating Agency are requested to submit a letter of intent

to COL John B. O'Dowd, District Engineer, at the above address.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–13042 Filed 5–23–02; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for a Dredged Material Management Plan for the Port of Baltimore, Chesapeake Bay, MD

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, the Baltimore District, U.S. Army Corps of Engineers (USACE) will conduct a study to evaluate the dredged material placement needs and opportunities for the Port of Baltimore, Maryland and develop a Dredged Material Management Plan (DMMP). The study area encompasses the Baltimore Harbor and the Chesapeake Bay approach channels, which extend from the mouth of the Bay in Virginia to Chesapeake and Delaware Canal, in the upper Bay, Maryland/Delaware. The purpose of the plan is to develop a long-term strategy for providing viable placement alternatives that meet the dredging needs of the Port of Baltimore Federal channels and include consideration of state and local dredging needs. The DMMP study will be evaluated through the preparation of a tiered EIS. As part of the process, the goals and objectives of the study will be clearly determined by all study participants. The DMMP will identify the quantity of material to be dredged from the Federal channels and how the dredged material can be managed in an economically and environmentally acceptable manner. Priority will be given to beneficial uses of the material. Beneficial uses include, but are not limited to, restoration of underwater grasses, islands, wetlands, shorelines, or fish and shellfish habitat. The DMMP will identify,evaluate, screen, prioritize, and ultimately optimize placement alternatives resulting in the recommendation of a plan for the placement of dredged materials for at least the next 20 years. The Baltimore District is actively seeking public opinion and advice to be incorporated into the plan. To this end, three public scoping meetings are planned throughout the study area. The meetings are tentatively scheduled at 7:00 p.m. for the following dates, in the following locations: Wednesday, June 12, 2002 at Queen Anne's County Library in Stevensville, MD; Tuesday, June 18, 2002 at Community College of Baltimore County, Dundalk Campus, Campus Community Center, in Baltimore, MD; and Thursday, June 20, 2002 at Anne Arundel Community College, Lecture Hall 101, in Arnold, MD.

The study will be conducted in compliance with Section 404 and Section 401 of the Clean Water Act, Section 7 of the Endangered Species Act, the Clear Air Act, the U.S. Fish and Wildlife Coordination Act, Section 106 of the National Historic Preservation Act, Prime and Unique Farmlands, the Magnuson-Stevens Fishery Conservation and Management Act, and National Pollutant Discharge Elimination System Act. All appropriate documentation (i.e., Section 7, section 106 coordination letters, and public and agency comments) will be obtained and included as part of the Environmental Impact Statement (EIS).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and draft EIS can be addressed to Ms. Michele Bistany, U.S. Army Corps of Engineers, ATTN: CENAB–PL, 10 South Howard Street, PO Box 1715, Baltimore, MD 21203–1715, telephone 410–962–4934; e-mail address: *michele.a.bistany@usace.army.mil*.

SUPPLEMENTARY INFORMATION:

1. The Baltimore District Corps of Engineers is responsible for the maintenance of navigation channels in the Chesapeake Bay and Patapsco River known as the Baltimore Harbor and Channels project. Maintenance of these channels requires the annual placement of approximately 4.5 million cubic yards of dredged material. The DMMP study will include an associated programmatic tiered EIS to allow for identification of a suite of options or projects for future detailed study in order to provide for long-term optimized capacity of dredged material. The tiered EIS allows all interested parties the opportunity to participate in the process from inception. It also includes adequate environmental analysis so that future NEPA documentation can be based on a solid foundation.

2. The USACE, Engineering Regulation (ER) 1105–2–100 mandates that the Corps Districts develop DMMP plans for all Federal harbor projects where there is an indication of insufficient capacity to accommodate maintenance dredging for the next 20 years. The ER further states that the Districts are encouraged to consider options that provide opportunities for beneficial uses of dredged material for environmental purposes including habitat restoration. The DMMP process began with a Preliminary Assessment that was completed in September 2001. The Preliminary Assessment identified placement option shortfalls within the next 8–10 year time frame.

3. As part of the EIS process, recommendations of placement sites and options for dredged material management will be based on an evaluation of the probable impact of the proposed activity on the public interest. The decision will reflect the national concern for the protection and utilization of important resources. The benefit, which may reasonably be expected to accrue from the proposal, will be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, among there are wetlands; fish and wildlife resources; cultural resources; land use; water and air quality; hazardous, toxic, and radioactive substances; threatened and endangered species; regional geology; aesthetics; environmental justice; and the general needs and welfare of the public.

4. The draft EIS for the DMMP is expected for public release in late 2004.

Mr. Kevin Bunker,

Assistant Chief, Planning Division.

[FR Doc. 02–13048 Filed 5–23–02; 8:45 am]

BILLING CODE 3710–41–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Integrated Draft Project Implementation Report/ Environmental Impact Statement for the Southern Golden Gate Estates Hydrologic Restoration

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps) Jacksonville District intends to prepare an integrated Draft Project Implementation Report/ Environmental Impact Statement (DPIR/ EIS) for the Southern Golden Gate Estates Hydrologic Restoration (SGGEHR). This DPIR/EIS is a cooperative effort between the Corps and the South Florida Water Management District (SFWMD). The SGGEHR planning process is authorized

under Section 601 of the Water Resources Development Act (WRDA) of 2000 as part of the Central and Southern Florida (C&SF) Comprehensive Everglades Restoration Plan (CERP). The objective of this project is to restore the hydrology of Southern Golden Gate Estates (SGGE) to that which existed prior to the 1960's real estate subdivision. Development of SGGE created approximately 20,000 separate parcels of land, 70 miles of drainage canals, and 290 miles of roads. Elimination of the home sites, plugging of the canals, reduction in the number of miles of roadway, and the reestablishment of a more natural hydrology are expected to restore native plant communities and improve habitat for fish and wildlife resources.

FOR FURTHER INFORMATION CONTACT: John Kremer, U.S. Army Corps of Engineers, Planning Division, Environmental Branch, PO Box 4970, Jacksonville, FL, 32232–0019, by e-mail *john.g.kremer@usace.army.mil*, or by telephone at 904–232–3551.

SUPPLEMENTARY INFORMATION:

a. *Authorization:* The Southern Golden Gate Estates Hydrologic Restoration PMP and PIR planning process is authorized under Section 601 of the Water Resources Development Act (WRDA) of 2000 as part of the Central and Southern Florida (C&SF) Comprehensive Everglades Restoration Plan (CERP).

b. *Study Area:* Southern Golden Gate Estates encompasses an area of approximately 94 square miles (60,160 acres) in southwestern Collier County, Florida. It is located between Interstate 75 and U.S. Highway 41. SGGE is located southwest of the Florida Panther National Wildlife Refuge, north of the Ten Thousand Islands Aquatic Preserve and the Ten Thousand Islands National Wildlife Refuge, east of the Belle Meade State Conservation and Recreation Lands Project Area, and west of the Fakahatchee Strand State Preserve. In combination with the Belle Meade tract SGGE will be managed as the Picayune Strand State Forest. Northern Golden Gate Estates (NGGE) lies across Interstate 75 to the north of SGGE.

c. *Project Scope:* Implementation of this project would restore a more natural hydrology in Southern Golden Gate Estates by reintroducing sheet flow, reestablishing historic flow ways, reducing runoff through increased evaporation and groundwater recharge, and by replacing point source discharges from the Faka Union Canal with distributed flow to tidal coastal marshes along U.S. highway 41. The proposed project would plug the canals, reduce the number of miles of roadway, and reestablish a more natural hydrology. Accomplishment of these objectives is expected to restore historic native plant communities and improve habitat for fish and wildlife resources.

d. *Preliminary Alternatives:* The DPIR/EIS will evaluate alternative structural and non-structural measures to modify the existing water management system of SGGE to accomplish the following objectives: Establish more uniform freshwater flows to estuaries, restore historic hydro patterns, restore wetland and upland communities, reduce habitat for invasive non-native species, increase aquifer recharge, restore ecological connectivity among public lands, restore habitat for listed species, increase fish and wildlife resources, restore the natural fire regime, remediate or remove chemical contaminants, maintain existing level of flood protection, and maintain appropriate access for managing agencies and public users of the state forest.

e. *Issues:* The integrated DPIR/EIS will address the following issues: restoration of wetlands and upland ecosystems; water flows; future environmental and urban water demand and supply; socio-economic resources; aquifer recharge; water quality; impacts to the estuaries; flood protection; aesthetics and recreation; fish and wildlife resources, state and federal protected species; cultural resources; and other impacts identified through further scoping, public involvement, and interagency coordination.

f. *Scoping:* The SGGE project has had a long history of public and interagency involvement dating back to the 1978 Congressional authorization for the Corps to prepare a Golden Gate Estates (GGE) Feasibility Study. The Corps published the GGE Feasibility Study in 1986. In February of 1996 the Big Cypress Basin/South Florida Water Management District submitted the ''Hydrologic Restoration of Southern Golden Gate Estates—Conceptual Plan'' to the Governor of Florida. In January 1997 the Interagency Technical Advisory Committee (ITAC) convened with respresetatives from the Corps, U.S. Fish and Wildlife Service, U.S. Geological Survey, FDEP, Florida Game and Fresh Water Fish Commission and others, to provide input and assistance for the Cooperative Watershed Planning Assistance Study led by USDA–NRCS and SFWMD. NRCS published this study in September 2001. In September 2000, utilizing the expertise of the ITAC, the Corps and SFWMD jointly initiated the development of a Project Management Plan (PMP) for the SGGE restoration project. The PMP was presented to the Big Cypress Basin Board of Directors at a public meeting in February of 2001. During the past 24 years local and state agencies have held numerous meetings to gather input on issues and opportunities involving the restoration of SGGE.

g. *DPIR/EIS Preparation:* The integrated DPIR/EIS is scheduled for publication in June 2005.

Dated: May 8, 2002.

George M. Strain,

Acting Chief, Planning Division.

[FR Doc. 02–13044 Filed 5–23–02; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF EDUCATION

[CFDA 84.184B]

Mentoring Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: This program provides assistance to promote mentoring programs for children with greatest need that: (1) Assist these children in receiving support and guidance from a mentor; (2) improve the academic performance of the children; (3) improve interpersonal relationships between the children and their peers, teachers, other adults, and family members; (4) reduce the dropout rate of the children; and (5) reduce the children's juvenile delinquency and involvement in gangs.

Eligible Applicants: (1) Local educational agencies (LEAs); (2) nonprofit, community-based organizations (CBOs), which may include faith-based organizations; and (3) a partnership between an LEA and a CBO.

Note: We strongly encourage partnerships between LEAs and CBOs that propose school-based mentoring programs.

Applications Available: May 24, 2002.

Deadline for Transmittal of Applications: July 2, 2002.

Deadline for Intergovernmental Review: September 2, 2002.

Estimated Available Funds: $17,500,000.

Estimated Range of Awards: $100,000–$200,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 115.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General

Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99; and (b) the final priorities, selection criteria and definitions for this grant competition as published in this notice.

Priorities

Statutory Priority: This competition focuses exclusively on projects designed to meet the statutory priority in section 4130(b)(5)(B) of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001.

To be eligible for funding, a project must propose mentoring programs and activities to serve children with the greatest need living in rural areas, high-crime areas, troubled home environments, or who attend schools with violence problems.

For FY 2002 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

Competitive Preference Priority: Within the statutory priority for this competition for FY 2002, we will award five additional points to novice applicants. These points are in addition to any points the application earns under the selection criteria for this program.

Note: The total number of points an application may earn is 105.

Requirements

Projects funded under this priority must—

(A) Link children with mentors who—

(i) Have received training and support in mentoring;

(ii) Have been screened using appropriate reference checks, child and domestic abuse record checks, and criminal background checks; and

(iii) Are interested in working with children with greatest need;

(B) Be designed to achieve one or more of the following goals with respect to children with greatest need:

(i) Provide general guidance.

(ii) Promote personal and social responsibility.

(iii) Increase participation in, and enhance the ability to benefit from, elementary and secondary education.

(iv) Discourage illegal use of drugs and alcohol, violence, use of dangerous weapons, promiscuous behavior, and other criminal, harmful, or potentially harmful activity.

(v) Encourage participation in community service and community activities.

(vi) Encourage setting goals and planning for the future, including encouragement of graduation from secondary school and planning for postsecondary education or training.

(vii) Discourage involvement in gangs.

Grant funds must be used for activities that establish or implement a mentoring program, which may include:

1. Hiring of mentoring coordinators and support staff;

2. Providing for the professional development of mentoring coordinators and support staff;

3. Recruitment, screening, and training of mentors;

4. Reimbursement to schools, if appropriate, for the use of school materials or supplies in carrying out the mentoring program;

5. Dissemination of outreach materials; and

6. Evaluation of the mentoring program using scientifically based methods.

Participation by Private School Children and Teachers

LEAs that receive a Mentoring Programs grant are required to provide for the equitable participation of eligible private school students and their teachers or other educational personnel. In order to ensure that grant program activities address the needs of private school children, timely and meaningful consultation with appropriate private school officials must occur during the design and development of the program. Administrative direction and control over grant funds must remain with the grantee.

Maintenance of Effort

An LEA may receive a grant under Mentoring Programs only if the State educational agency finds that the combined fiscal effort per student or the aggregate expenditures of the agency and the State with respect to the provision of free public education by the agency for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

Prohibited Uses of Funds

Grant funds may not be used to (1) directly compensate mentors; (2) obtain educational or other materials or equipment that would otherwise be used in the ordinary course of the grantee's operations; or (3) support litigation of any kind.

Participation of Faith-based Organizations

Faith-based organizations are eligible to apply for grants under this competition provided they meet all statutory and regulatory requirements.

General Information

The Assistant Secretary may take into consideration the geographic distribution of the projects, including urban and rural locations, in addition to the rank order of applicants. To the extent practicable, the Assistant Secretary will select not less than one grant recipient from each State for which there is an eligible entity that submits an application of sufficient quality. Contingent upon the availability of funds, the Assistant Secretary may make additional awards in FY 2003 from the rank-ordered list of unfunded applications from this competition.

Application Requirements

Applications submitted under this program must include the following:

(1) A description of the plan for the mentoring program the eligible entity proposes to carry out;

(2) Information on the children expected to be served by the mentoring program;

(3) A description of the mechanism the eligible entity will use to match children with mentors based on the needs of the children;

(4) Information regarding how mentors and children will be recruited to the mentoring program;

(5) Information regarding how prospective mentors will be screened;

(6) Information on the training that will be provided to mentors; and

(7) Information on the system that the eligible entity will use to manage and monitor information relating to the mentoring program's:

(i) Reference checks;

(ii) Child and domestic abuse record checks;

(iii) Criminal background checks; and

(iv) Procedure for matching children with mentors.

Assurances

Applicants must provide the following assurances:

(1) An assurance that no mentor will be assigned to mentor so many children that the assignment will undermine the mentor's ability to be an effective mentor or the mentor's ability to establish a close relationship (a one-to-one relationship, where practicable) with each mentored child;

(2) An assurance that the mentoring program will provide children with a variety of experiences and support, including—

(i) Emotional support;

(ii) Academic assistance; and

(iii) Exposure to experiences that the children might not otherwise encounter on their own;

(3) An assurance that the mentoring program will be monitored to ensure that each child assigned a mentor benefits from that assignment and that the child will be assigned a new mentor if the relationship between the original mentor and the child is not beneficial to the child;

(4) An assurance from each CBO submitting an application that it is eligible under the definitions provided.

Definitions

(1) The term ''*child with greatest need*'' means a child who is at risk of educational failure, dropping out of school, or involvement in criminal or delinquent activities, or who lacks strong positive role models.

(2) The term ''*mentor*'' means a responsible adult, a postsecondary school student, or a secondary school student who works with a child to—(a) Provide a positive role model for the child; (b) Establish a supportive relationship with the child; and (c) Provide the child with academic assistance and exposure to new experiences and examples of opportunity that enhance the ability of the child to become a responsible adult.

(3) The term ''*non-profit*'' refers to a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(4) The term ''*community-based organization*'' means a public or private nonprofit organization of demonstrated effectiveness that is representative of a community or significant segments of a community and provides educational or related services to individuals in the community.

(5) The term ''*novice applicant*'' means any applicant for a grant from the U.S. Department of Education that:

(a) Has never received a grant or subgrant under the program from which it seeks funding;

(b) Has never been a member of a group application, submitted in accordance with 34 CFR 75.127–75.129, that received a grant under the program from which it seeks funding; and

(c) Has not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127–75.129, to qualify as a novice applicant a group includes only parties that meet the requirements listed above.

Selection Criteria: The Assistant Secretary will use the following selection criteria to evaluate applications under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(1) *Need for project.* (10 points)

In determining the need for the proposed project, the following factors are considered:

(a) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project. (10 points)

(2) *Quality of the project design.* (55 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable; (5 points)

(b) The extent to which parents, teachers, community-based organizations, and the local community have participated, or will participate, in the design and implementation of the proposed mentoring program; (5 points)

(c) The quality of the system that will be used to manage and monitor mentor reference checks, including child and domestic abuse record checks and criminal background checks; (15 points)

(d) The quality of the training that will be provided to mentors, including follow-up and support of each match between mentor and child; (10 points)

(e) The quality of the mechanism that will be used to match children with mentors, based on the needs of the children, and ensure that mentors will develop longstanding relationships with the children they mentor; (5 points)

(f) The extent to which the proposed project will serve children with the greatest need in the 4th and 8th grades, and continue to serve children from the 9th grade through graduation from secondary school, as needed; (5 points)

(g) The capability of the applicant to effectively implement its mentoring program; (5 points)

(h) The resources that will be dedicated to providing children with opportunities for job training or postsecondary education. (5 points)

(3) *Quality of project personnel.* (20 points)

In determining the quality of project personnel, the Secretary considers:

(a) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability; (5 points)

(b) The qualifications, including relevant training and experience, of key project personnel; (5 points)

(c) The quality of the plan to recruit mentors. (10 points)

(4) Quality of the project evaluation. (15 points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project; (10 points)

(b) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Secretary generally offers interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provisions Act, however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program authority. This is the first competition under the Mentoring Programs grant competition. These rules will apply to this FY 2002 grant competition only.

For Applications and Other Information Contact: Copies of the application for this competition are available from EDPubs at 1–877–4EDPubs, and on the Internet at *http://www.ed.gov/offices/OESE/SDFS.* For all other questions, please contact Bryan Williams, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3E259, Washington, DC 20202–6123. Telephone: (202) 260–2391. Email address: *bryan.williams@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

Individuals with disabilities may obtain this document, or an application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed at the beginning of this section. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal**

Register, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF, you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at (888) 293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Pilot Project for Electronic Submission of Applications

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

In FY 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Mentoring Program is one of the programs included in the pilot project. If you are an applicant under this grant competition, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We will continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic of paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs, (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorized Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right corner of the ED 424.
5. Fax ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for Mentoring Programs at *http://e-grants.ed.gov.*

We have included additional information on the e-APPLICATION pilot project (*see* Parity Guidelines between Paper and Electronic Applications) in the application package.

If you want to apply for a grant and be considered for funding, you must meet the deadline requirements listed above.

Program Authority: 20 U.S.C. 7140.

Dated: May 16, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–13161 Filed 5–23–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.206A]

Office of Elementary and Secondary Education; Jacob K. Javits Gifted and Talented Students Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002 and Establishing Two Absolute Priorities

Purpose of Program: The purpose of the Javits program is to carry out a coordinated program of scientifically based research, demonstration projects, innovative strategies, and similar activities designed to build and enhance the ability of elementary and secondary schools nationwide to meet the special educational needs of gifted and talented students.

Eligible Applicants: State educational agencies, local educational agencies, institutions of higher education, other public agencies, and other private agencies and organizations (including Indian tribes and Indian organizations and Native Hawaiian organizations). Under the first priority in this competition, all of these entities are eligible to apply. Under the second priority, only State educational agencies in collaboration with one or more local educational agencies are eligible to apply.

Applications Available: May 24, 2002.

Deadline for Transmittal of Applications: July 8, 2002.

Deadline for Intergovernmental Review: June 24, 2002.

Available Funds: Priority 1—$5,100,000, Priority 2—$3,750,000.

Estimated Number of Awards: Priority 1—10, Priority 2—12.

Estimated Size of Awards: Priority 1—$400,000–$600,000, Priority 2—$200,000–$300,000.

Estimated Average Size of Awards: Priority 1—$500,000, Priority 2—$250,000.

(Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.)

Project Period: Up to 60 months for the first priority and up to 36 months for the second priority.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Elementary and Secondary Education invites applications for new grant awards for FY 2002 for the Jacob K. Javits Gifted and Talented Students Education program (Javits program). The Javits program has been rewritten in its entirety by P.L. 107–110, the No Child Left Behind Act, and is now located in Title V, Part D, Subpart 6 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), under which these grants are authorized (20 U.S.C. 7253 *et seq.*). The Jacob K. Javits Gifted and Talented Students Education Act of 2001 supports a coordinated program of research, demonstration projects, and other activities to build and enhance the ability of schools nationwide to serve gifted and talented students.

The Assistant Secretary also announces two final absolute priorities and final selection criteria to govern this competition and the FY 2002 awards of these grants. In accordance with § 5465(a) and (b) of the statute, the Assistant Secretary intends to give

priority to projects designed to develop new information that improves the capability of schools to plan, conduct, and improve programs to identify and serve gifted and talented students and to projects that identify and serve students from underrepresented groups, including economically disadvantaged, limited English speaking, and disabled students. The Secretary also will implement § 5464(c) of the statute, requiring funding of certain projects when appropriation levels for the Javits program in a given year exceed the appropriation in FY 2001.

Accordingly, the Assistant Secretary will make awards under the following two absolute priorities to encourage activities that will contribute to an understanding of the most effective ways to educate gifted and talented students who are economically disadvantaged, limited English proficient, or who have disabilities. These priorities will help to target funds to high-needs populations within the general program purpose of assisting States and local school districts to better serve gifted and talented students.

The Assistant Secretary's first priority implements section 5465(a) of the statute and focuses on projects that propose to develop, conduct, scale up, and evaluate programs that identify and serve gifted and talented students who are economically disadvantaged or limited English proficient, or who have disabilities and who may not be identified and served through traditional assessment methods. According to a 2002 report by the National Research Council titled ''Minority Students in Special and Gifted Education,'' these groups of students remain significantly under-represented at the highest levels of performance. Over the past decade, small-scale model projects and intervention strategies have produced some evidence of effectiveness in raising student achievement to high levels. The goal of this first priority is to expand upon, field test, and evaluate research-based interventions that have existing evidence of success in increasing the proportion of economically disadvantaged, limited English proficient, or disabled students performing at high levels of achievement. Based on the experience of previous grant recipients, the Assistant Secretary believes that these projects will be most successful if they are carried out by applicants that can demonstrate an expertise in: education research and program evaluation, one or more of the core academic subject areas (English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography), the needs of disadvantaged or other under-represented students, and gifted and talented education. In order to meet the absolute priority, projects must: (1) Build on successful interventions and strategies that show evidence that they have increased student achievement, (2) draw on expertise in research and program evaluation, disciplinary knowledge in the core subject areas, the needs of underrepresented groups, and gifted and talented education, (3) expand upon the intervention as it is carried out in multiple sites, and (4) propose a careful research and evaluation plan.

The Assistant Secretary establishes this first priority after having reviewed the relevant research base and the evaluations of previously funded projects, holding discussions with project directors, and consulting with experts in the field.

The Assistant Secretary's second absolute priority implements the ''Special Rule'' in § 5464(c) of the authorizing legislation that requires any funds available in a fiscal year that exceed the amount that was available in FY 2001 to be awarded to State educational agencies or local educational agencies, or both, to carry out such activities as: research and development on gifted and talented education and how it may be used to improve the education of all students, program evaluations and information collection activities, model projects and innovative strategies, technical assistance and information dissemination, distance learning opportunities, and professional development. Because the FY 2001 appropriation was $7.5 million and the FY 2002 appropriation is $11.25 million, $3.75 million is therefore available in FY 2002 for these purposes. To ensure the most effective use of funds for the above-stated purposes, under this second priority the Assistant Secretary will only fund projects submitted by State educational agencies that propose to collaborate with one or more local educational agencies to carry out a coordinated set of activities to build statewide capacity to serve gifted and talented students.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Secretary generally offers interested parties the opportunity to comment on proposed regulations. However, to make timely awards in FY 2002, the Secretary has decided to issue these final priorities without first publishing them as proposals for public comment. These priorities will apply to the FY 2002 grant competition only. The Secretary takes this action under section 437(d)(1) of the General Education Provisions Act.

Absolute Priorities: Under 34 CFR 75.105(c)(3) and the Jacob K. Javits Gifted and Talented Students Education Act, the Assistant Secretary gives absolute priority to applications that meet one of the following priorities and funds only applications that meet one of the absolute priorities. Each application must address one of these two priorities. Applicants cannot address both priorities in the same application. Applicants eligible to apply under both priorities must submit separate applications to address each of the priorities and the applications will be reviewed separately.

Absolute Priority 1—Javits Demonstration Programs: Under this absolute priority, applicants must propose projects to plan, implement, scale up, and evaluate models designed to close the achievement gap for students in underrepresented groups, including economically disadvantaged, limited English proficient, or disabled students, performing at the highest levels.

To meet this priority each project must include all of the following:

(1) Evidence from one or more scientifically based research and evaluation studies indicating the efficacy of the proposed approach in raising achievement of underrepresented groups to high levels of achievement in one or more core subject areas.

(2) Evidence that the applicant has significant expertise in research and program evaluation, knowledge in one or more core academic subject areas, experience working with underrepresented groups, and knowledge about gifted and talented education.

(3) A sound plan for implementing the model in multiple settings.

(4) A research and evaluation plan that will yield both formative and summative information on the effectiveness of the model, including student achievement data.

Absolute Priority 2—Javits State Capacity-Building Grants: Under this absolute priority, State educational agencies (SEAs), in collaboration with one or more local educational agencies (LEAs), must propose projects to improve services to gifted and talented students and develop the capacity of the States and LEAs to serve these students more effectively. Under this priority, applications must propose to carry out one or more of the following activities:

(1) Conducting scientifically based research on methods and techniques for identifying and teaching gifted and talented students and for using gifted and talented programs and methods for serving all students, and conducting program evaluations, surveys, and the collection, analysis, and development of information needed to accomplish the proposed project.

(2) Conducting professional development (including fellowships) for personnel (including leadership personnel) involved in the education of gifted and talented students.

(3) Establishing and operating model projects and exemplary programs for serving gifted and talented students, including innovative methods for identifying and educating students who may not be served by traditional gifted and talented programs (such as summer programs, mentoring programs, service learning programs, and cooperative programs involving business, industry, and education).

(4) Implementing innovative strategies, such as cooperative learning, peer tutoring, and service learning.

(5) Providing programs of technical assistance and information dissemination, including assistance and information with respect to how gifted and talented programs and methods, where appropriate, may be adapted for use by all students.

(6) Making materials and services available through State regional educational service centers, institutions of higher education, or other entities.

(7) Providing challenging, high-level course work, disseminated through technologies (including distance learning), for individual students or groups of students in schools and local educational agencies that would not otherwise have the resources to provide such course work.

Other Requirements

The Assistant Secretary directs the applicants' attention to the requirements in section 5464(a)(2) of the statute, stating that each applicant requesting support under the Javits program must describe how:

(1) The proposed gifted and talented services, materials, and methods can be adapted, if appropriate, for use by all students, and

(2) The proposed programs can be evaluated.

Definitions: The definitions contained in the Jacob K. Javits Gifted and Talented Students Education Act of 2001, at Title IX, Part A of the ESEA, apply to the Javits program and this competition. In particular, the Assistant Secretary directs applicants' attention to the following definition:

Core Academic Subjects. The term ''core academic subjects'' means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. (20 U.S.C. 7801(11)).

Selection Criteria: The Assistant Secretary uses the following selection criteria to evaluate applications for new grants under this competition. Each of the two absolute priorities in this competition has separate selection criteria tailored to the specific requirements of the priority. These selection criteria are drawn from EDGAR § 75.210. In both sets of selection criteria, the maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

Selection Criteria for Priority 1 (Javits Demonstration Programs)

(1) *Significance.* (15 points)

In determining the significance of the proposed project, the following factors are considered:

(i) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study.

(ii) The potential for generalizing from the findings or results of the proposed project.

(2) *Quality of the project design.* (20 points)

In determining the quality of the project design of the proposed project, the following factors are considered:

(i) The extent to which the proposed activities constitute a coherent, sustained program of research and development in the field, including, as appropriate, a substantial addition to an ongoing line of inquiry.

(ii) The extent to which the proposed project represents an exceptional approach to the priority established for the competition.

(iii) The quality of the methodology to be employed in the proposed project.

(3) *Quality of project services.* (20 points)

In determining the quality of the services to be provided by the proposed project, the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability is considered. In addition, the following factors are considered:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(ii) The likelihood that the services to be provided will lead to improvements in the achievement of students as measured against rigorous academic standards.

(iii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(4) *Quality of project personnel.* (10 points)

In determining the quality of project personnel, the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability is considered. In addition, the following factors are considered:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(5) *Adequacy of resources.* (10 points)

In determining the adequacy of resources for the proposed project, the following factors are considered:

(i) The adequacy of support, including facilities, equipment, supplies and other resources, from the applicant organization or the lead applicant organization.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(6) *Quality of project evaluation* (25 points)

In determining the quality of the project evaluation, the following factors are considered:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Section Criteria for Priority 2 (Javits State Capacity—Building Grants)

(1) *Need for the project.* (15 points)

In determining the need for the project, the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses, is considered.

(2) *Quality of the project design.* (20 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project represents an exceptional approach to the priority established for the competition.

(3) *Quality of project services.* (15 points) In determining the quality of the services to be provided by the proposed project, the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability is considered. In addition, the following factors are considered:

(i) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(ii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(4) *Quality of project personnel.* (10 points)

In determining the quality of the project personnel, the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, is considered. In addition, the following factors are considered:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of the key project personnel.

(5) *Adequacy of resources.* (10 points)

The adequacy of resources for the proposed project is considered.

(6) *Quality of the management plan.* (10 points)

In determining the quality of the management plan for the proposed project, the following factors are considered:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of the procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(7) *Quality of the project evaluation.* (20 points) In determining the quality of the evaluation, the following factors are considered:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: Emily McAdams, U.S. Department of Education, Room 5W252, 400 Maryland Ave., SW., Washington, DC 20202. Telephone: (202) 260–8753 or the following email or Internet address: *emily.mcadams@ed.gov*

If you use a telecommunications devise for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document, or an application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to this Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*

To use PDF you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Program Authority: 20 U.S.C. 7253 *et seq.*

Dated: May 21, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–13160 Filed 5–23–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity, (National Advisory Committee); Notice of Meeting Changes

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education.

SUMMARY: This notice advises interested parties of changes concerning the upcoming meeting of the National Advisory Committee and amends information provided in the original meeting notice published in the March 21, 2002 **Federal Register** (67 FR 13131).

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie LeBold, the Executive Director of the National Advisory Committee on Institutional Quality and Integrity, U.S. Department of Education, room 7007, MS 7592, 1990 K St., NW., Washington, DC 20006, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: *Bonnie.LeBold@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The changes to the agenda are as follows:

(1) The National Advisory Committee meeting originally scheduled from 8:30 a.m. until 3 p.m. on Wednesday, June 5, 2002, as indicated in the March 21, 2002 **Federal Register** (67 FR 13131), will conclude at approximately 12:30 p.m.

(2) The agency listed below, which was originally scheduled for review during the National Advisory Committee's June 2002 meeting, will be postponed for review until a future meeting.

- Teacher Education Accreditation Council (Requested scope of recognition: the accreditation of professional education programs in institutions offering baccalaureate and graduate degrees for the preparation of teachers K–12)

Any third-party written comments regarding this agency that were received by March 18, 2002, in accordance with the **Federal Register** notice published on February 1, 2002, will become part of the official record, and those

comments will be considered by the National Advisory Committee when it reviews the agency's petition for initial recognition at a future meeting. In addition, prior to the meeting, another opportunity to provide written comments on the agency will be announced in a **Federal Register** notice.

How May I Obtain Electronic Access to This Document?

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Authority: 5 U.S.C. Appendix 2.

Dated: May 16, 2002.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 02–13068 Filed 5–23–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Envrionmental Management; Site-Specific Advisory Board Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (Public Law No. 92–463), in accordance with Title 41 of the Code of Federal Regulations, section 102–3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Environmental Management Site-Specific Advisory Board has been renewed for a two-year period beginning May 16, 2002. The Environmental Management Site-Specific Advisory Board will provide advice and recommendations to the Assistant Secretary for Environmental Management, appropriate Site Manager(s), and other U. S. Department of Energy officials the Assistant Secretary shall designate.

The Board provides information, advice and recommendations concerning issues affecting the Environmental Management program at various sites. These site-specific issues include clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use; long-term stewardship; risk assessment and management; and science and technology activities.

The renewal of the Environmental Management Site-Specific Advisory Board has been determined to be essential to the conduct of Department of Energy business and to be in the public interest in connection with the performance of duties imposed on the Department of Energy by law and agreement. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act, and rules and regulations issued in implementation of this Act.

Further information regarding this Advisory Board may be obtained from Ms. Martha S. Crosland at (202) 586–5944.

Issued in Washington, DC, on May 20, 2002.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 02–13104 Filed 5–23–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register.**

DATES: Wednesday, June 12, 2002, 6 p.m.–9:30 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Presentation to be Determined.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–922, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on May 20, 2002.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 02–13103 Filed 5–23–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX02–2–000; ER02–1654–000]

Kiowa Power Partners, LLC, Oncor Electric Delivery Company; Notice of Filing

May 14, 2002.

Take notice that on May 6, 2002, Reliant Energy HL&P (Reliant) filed a pleading entitled ''Motion to Intervene and Comments,'' stating that it does not oppose the Application filed in these dockets by Kiowa Power Partners, LLC and Oncor Electric Delivery Company (Oncor). Reliant explains that its' position is based on the understanding that certain changes will be made to

incorporate Reliant into the proposed Order under Sections 210, 211, and 212 requiring interconnections and transmission service. Reliant states that the Order requested by Kiowa would effectively require Reliant, as well as Oncor, to provide transmission service.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: May 23, 2002.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13093 Filed 5–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–23–000, et al.]

Trans-Elect, Inc. et al.; Electric Rate and Corporate Regulation Filings

May 17, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Trans-Elect, Inc., Michigan Transco Holdings, Limited Partnership, Consumers Energy Company, and Michigan Electric Transmission Company

[Docket Nos. EC02–23–000 and ER02–320–004]

Take notice that on May 13, 2002, Consumers Energy Company (Consumers) submitted the compliance filing required by the Federal Energy Regulatory Commission's (Commission) order of February 13, 2002 in the above-referenced proceedings. The filing includes First Revised Consumers Rate Schedule Nos. 116 and 117.

The filing was served on all parties on the Commission's official service list in these proceedings.

Comment Date: June 3, 2002.

2. Trans-Elect, Inc., Michigan Transco Holdings, Limited Partnership, Consumers Energy Company, and Michigan Electric Transmission Company

[Docket Nos. EC02–23–000 and ER02–320–005]

Take notice that on May 13, 2002, Michigan Electric Transmission Company, LLC (Michigan Transco LLC) submitted the compliance filing required by the Federal Energy Regulatory Commission's (Commission) order of February 13, 2002 in the above-referenced proceedings.

Copies of the transmittal letter included as part of this filing were served on all parties on the Commission's official service list in these proceedings and on all affected state commissions.

Comment Date: June 3, 2002.

3. Thermo Cogeneration Partnership, L.P

[Docket No. EG02–135–000]

Take notice that on May 9, 2002, Thermo Cogeneration (Thermo Cogeneration), a Delaware limited liability partnership, with its principal place of business at 6811 Weld County Road, Ft. Lupton, Colorado 80621, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations

Thermo Cogeneration states that it will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, a 272 MW gas-fired combined cycle power generation facility located in Ft. Lupton, Colorado (Facility). Under power purchase agreements with Public Service Co. of Colorado, Thermo Cogeneration will sell the capacity exclusively at wholesale.

A copy of the filing was served upon the Securities and Exchange Commission, the Public Utilities Commission of the State of Colorado.

Comment Date: June 7, 2002.

4. Wisconsin Power and Light Company

[Docket Nos. EL02–47–002 and EL02–52–002]

Take notice that on May 14, 2002, Wisconsin Power and Light Company tendered for filing with the Federal Energy Regulatory Commission (Commission), a Refund Report in response to the Commission's Order dated March 15, 2002 in the above named dockets.

A copy of this filing has been served upon all affected customers and the Public Service Commission of Wisconsin.

Comment Date: June 4, 2002.

5. Entergy Services, Inc.

[Docket No. ER00–1743–004]

Take notice that on May 14, 2002, Entergy Services, Inc., submits for filing with the Federal Energy Regulatory Commission (Commission) on behalf of the five Entergy Operating Companies: Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (together Entergy), this compliance filing is in response to the Commission's April 29, 2002 Order in the above-captioned docket. A copy of this filing has been served upon the state regulators of the Entergy operating companies.

Comment Date: June 4, 2002.

6. Central Maine Power Company

[Docket No. ER02–1223–001]

Please take notice that on May 14, 2002 , Central Maine Power Company (CMP) tendered for filing an executed Local Network Operating Agreements (LNOA) and executed service agreements for Local Network Transmission Service (LNSA) entered into with United American Hydro, L.P. (UAH–Hydro Kennebec Limited Partnership). These agreements supersede agreements previously filed on March 4, 2002. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP–FERC Electric Tariff, Fifth Revised Volume No. 3, under the following Service Agreement Numbers:

United American Hydro LNSA–First Revised Service Agreement No. 147

United American Hydro LNOA–First Revised Service Agreement No. 148

Comment Date: June 4, 2002.

7. Tri-State Power, LLC

[Docket No. ER02–1263–001]

Take notice that on May 10, 2002, Tri-State Power, LLC (TSP) tendered for filing with the Federal Energy Regulatory Commission (Commission) corrected copies of the long-term contract under which (TSP) will sell electricity under Rate Schedule FERC No. 1 to Tri-State Generation & Transmission Association, Inc. (TSGTA) in compliance with the April 25, 2002 letter from Michael A. Coleman, Director, Division of Tariffs and Rates—West. TSP also filed a corrected short-term agreement under which it will sell start-up test energy to TSGTA..

Comment Date: June 4, 2002.

8. Commonwealth Edison Company

[Docket No. ER02–1775–000]

Take notice that on May 9, 2002, Commonwealth Edison Company (ComEd) submitted for filing a service agreement for non-firm point-to-point transmission service, a service agreement for short-term firm point-to-point transmission service, and a Network Operating Agreement between ComEd and Sempra Energy Solutions (Sempra) as well as a service agreement for firm point-to-point transmission service between ComEd and Edison Mission Marketing & Trading, Inc. (Edison Mission) (collectively the Agreements) under ComEd's FERC Electric Tariff, Second Revised Volume No. 5.

ComEd seeks an effective date of April 9, 2002 for the Agreements and, accordingly, seeks waiver of the Commission's notice requirements. ComEd states that a copy of this filing has been served on Sempra, Edison Mission and the Illinois Commerce Commission.

Comment Date: May 29, 2002.

9. Arthur Kill Power LLC

[Docket No. ER99–2161–003]

Take notice that on May 13, 2002, Arthur Kill Power LLC tendered for filing its triennial review in compliance with the Commission's order in Rocky Road Power LLC, et al. Docket No. ER99–2157–000, *et al.*, 87 FERC ¶ 61, 163 (1999).

Comment Date: June 3, 2002.

10. Huntley Power LLC

[Docket No. ER99–2162–003]

Take notice that on May 13, 2002, Huntley Power LLC tendered for filing its triennial review in compliance with the Federal Energy Regulatory Commission's (Commission) Order in Rocky Road Power LLC, et al. Docket No. ER99–2157–000, *et al.*, 87 FERC ¶ 61, 163 (1999).

Comment Date: June 3, 2002.

11. Dunkirk Power LLC

[Docket No. ER99–2168–003]

Take notice that on May 13, 2002, Dunkirk Power LLC tendered for filing its triennial review in compliance with the Federal Energy Regulatory Commission's (Commission) Order in Rocky Road Power LLC, et al. Docket No. ER99–2157–000, *et al.*, 87 FERC ¶ 61, 163 (1999).

Comment Date: June 3, 2002.

12. Astoria Gas Turbine Power LLC

[Docket No. ER99–3000–001]

Take notice that on May 13, 2002, Astoria Gas Turbine Power LLC tendered for filing its triennial review in compliance with the Commission's order in Rocky Road Power LLC, *et al.* Docket No. ER99–2157–000, *et al.*, 87 FERC ¶ 61, 163 (1999).

Comment Date: June 3, 2002.

13. Go Green, Inc.

[Docket No. QF02–65–000]

Take notice that on April 26, 2002, Go Green, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission), an Application for Certification of a Qualifying Facility.

Comment Date: May 28, 2002.

Standard Paragraph:

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13052 Filed 5–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Solicitation of Comments, Motions To Intervene, and Protests

May 20, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 3342–013.

c. *Date Filed:* May 8, 2002.

d. *Applicants:* New Hampshire Hydro Associates (Transferor) and Briar Hydro Associates (Transferee).

e. *Name of Project:* Penacook Lower Falls Project.

f. *Location:* On the Contoocook River, in Merrimack County, New Hampshire. The project would not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicants Contacts:* Elizabeth W. Whittle, Esq., Nixon Peabody LLP, 401 9th Street, NW., Suite 900, Washington, DC 20004; Richard A. Norman, New Hampshire Hydro Associates, c/o Essex Hydro Associates, L.L.C., 55 Union Street, Fourth Floor, Boston, MA 02108

i. *FERC Contact:* Regina Saizan, (202) 219–2673.

j. *Deadline for filing comments or motions:* June 11, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2008(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Please include the project number (P–3342–013) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the

Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. *Description of Transfer:* The transferee owns two other operating projects located immediately upstream of the Penacook Lower Falls Project. The transfer is being undertaken to restructure the current ownership and to consolidate and simplify the ownership and operation of the three projects.

l. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions ((202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13090 Filed 5–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–132–000]

Viking Gas Transmission Company; Notice of Informal Settlement Conference

May 20, 2002.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. on Wednesday, June 5, 2002, and continuing at 10 a.m. on Thursday, June 6, 2002, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Arnold H. Meltz at (202) 208–2161 or Carmen Gastilo at (202) 208–2182.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13091 Filed 5–23–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–132–000]

Viking Gas Transmission Company; Notice of Informal Settlement Conference

May 20, 2002.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10:00 a.m. on Wednesday, May 29, 2002, and continuing at 10:00 a.m. on Thursday, May 30, 2002, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214.

For additional information, please contact Arnold H. Meltz at (202) 208–2161 or Carmen Gastilo at (202) 208–2182.

Magalie R. Salas,

Secretary.

[FR Doc. 02–13092 Filed 5–23–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2001–1; FRL–7217–5]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Caldwell Tanks Alliance, LLC; Newnan (Coweta County), Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: Pursuant to Clean Air Act section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an order, dated April 1, 2002, denying a petition to object to a State operating permit issued by the Georgia Environmental Protection Division (Georgia EPD) to Caldwell Tanks Alliance, LLC, for its facility, located in Newnan, Coweta County, Georgia. This order constitutes final action on the petition submitted by Georgia Center for Law in the Public Interest on behalf of the Sierra Club. Pursuant to section 505(b)(2) of the Clean Air Act any person may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this document under section 307 of the Act.

ADDRESSES: Copies of the final order, the petition, and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The final order is also available electronically at the following address: *http://*

www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/caldwelltanks_decision2001.pdf.

FOR FURTHER INFORMATION CONTACT: Art Hofmeister, Air, Pesticides and Toxics Management Division, EPA, Region 4, telephone (404) 562–9115, e-mail *hofmeister.art@epa.gov.* Interested parties may also contact the Air Protection Branch, Georgia Environmental Protection Division, 4244 International Parkway, Atlanta, Georgia 30354.

SUPPLEMENTARY INFORMATION: The Clean Air Act (CAA or the Act) affords EPA a 45-day period to review, as appropriate, operating permits proposed by State permitting authorities under Title V of the CAA, 42 U.S.C. 7661–7661f (Title V). Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a Title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

Section 505(b)(2) provides that the Administrator shall grant or deny such a petition within 60 days after it is filed, and that the Administrator shall object to the permit within that period if the petitioner demonstrates that the permit is not in compliance with the requirements of the CAA. Section 505(b)(2) further provides that the Administrator's duties under that paragraph may not be delegated to another officer. In addition, section 505(e) of the CAA authorizes the Administrator to terminate, modify, or revoke and reissue a permit for cause at any time. In accordance with EPA's regulations at 40 CFR 70.7(f) and 70.7(g), any person may petition EPA to reopen a permit for cause. However, there is no deadline by which EPA is required to respond to such petitions.

Georgia Center for Law in the Public Interest submitted a petition on behalf of the Sierra Club (GCLPI or Petitioner) to the Administrator on May 9, 2001, requesting that EPA object to a state Title V operating permit, issued by the Georgia Environmental Protection Division (Georgia EPD) to Caldwell Tanks Alliance, LLC (Caldwell Tanks) for its facility located in Newnan, Georgia.

GCLPI's petition was not filed within the statutory time period for filing a section 505(b)(2) petition for objection to a Title V permit. Petitioner claims that it relied upon erroneous information provided by the Georgia EPD which indicated that the permit had been re-proposed to EPA. Reproposal of the permit would have re-started EPA's review period and, in turn, extended the time allowed for filing petitions for objection to the permit. Because the petition was untimely, EPA informed Petitioner that EPA intended to treat it as a petition to reopen the permit for cause in accordance with 40 CFR 70.7(f) and 70.7(g) and to respond on the merits.

Accordingly, EPA sent a letter, dated January 28, 2002, from Winston A. Smith, Director of Region 4's Air, Pesticides & Toxics Management Division, to Petitioner's counsel, stating that the petition was not timely filed under section 505(b)(2) and 40 CFR 70.8(d) and that EPA was treating it as a petition to reopen the permit for cause in accordance with 40 CFR 70.7(f) and 70.7(g). EPA also denied the petition to reopen on the merits.

Because EPA had not responded to the petition within the statutory 60-day period for responding to section 505(b)(2) petitions for objection, the Petitioner filed a nondiscretionary duty suit pursuant to section 304(a)(2) of the CAA in the United States District Court for the District of Columbia to compel EPA to grant or deny its petition. Two days after EPA responded to the Petitioner's petition, the court held that the doctrine of equitable tolling applies to that 60-day limitations period generally and applied against EPA in the Caldwell Tanks case to render the Petitioner's petition timely under section 505(b)(2). The court ordered the Administrator to consider the petition pursuant to section 505(b)(2) and to grant or deny the petition within 60 days of the court's order. *See Sierra Club* v. *Whitman,* Civil Action No. 01–01991 (ESH) (D.D.C. Jan. 30, 2002) (order and memorandum opinion). In light of the court's holding that the Petitioner's petition was timely under section 505(b)(2), the Administrator responded to the petition pursuant to that statutory provision in an order, dated April 1, 2002.

The Petitioner requested that EPA object to the Caldwell Tanks permit on the grounds that the permit is inconsistent with the Clean Air Act because the permit failed to: (1) Require the submittal of reports of any required monitoring at least every six months, as required under 40 CFR 70.6(a)(3)(iii)(A); (2) allow all persons to enforce violations of the permit; (3) go through proper public notice procedures because it stated only that the permit is enforceable by EPA and the Georgia EPD without also stating that the permit is enforceable by members of the public; and (4) include an emission limit or require monitoring to assure that no visible emissions result from a shot blasting and baghouse operation that the permit classifies as an insignificant activity.

The order denying this petition explains the reasons behind EPA's conclusion that the Petitioner failed to demonstrate that the Caldwell Tanks permit is not in compliance with the requirements of the Clean Air Act on the grounds raised.

Dated: May 13, 2002.

J. I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 02–13119 Filed 5–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6629–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–J65359–MT Rating EC2, Lolo National Forest Post Burn Management Activities, Implementation, Ninemile, Superior and Plains Ranger Districts, Mineral Missoula and Sanders Counties, MT.

Summary: EPA expressed environmental concerns with water quality proposed management actions in the 303(d) listed Ninemile Creek and Trout Creek drainages and suggested coordinating with the State's TMDL development efforts. EPA recommends that the final EIS should include a summary of major actions in the project area (and including adjacent lands) which may contribute to cumulative effects.

ERP No. D–FHW–F40405–IL Rating EC2, US 34/FAP 313 Transportation Facility Improvement Project, US 34 from the Intersection of Carman Road east of Gulfport to Monmouth, Funding and US Army COE Section 404 and NPDES Permits Issuance, Henderson and Warren Counties, IL.

Summary: EPA has identified issues, and expressed environmental concerns, relating to characterization of existing water quality, impacts to impaired waters and impacts to Botanical Site #3, a small sand hill prairie with a diverse mixture of grasses and forbs. Accordingly, EPA has requested additional information.

Final EISs

ERP No. F–AFS–J65348–CO Bark Beetle Analysis, Proposal to Reduce Infestation of Trees by Tree-Killing Bark Beetles, Medicine Bow-Routt National Forests, Hahans Peak/Bears Ears Ranger District, Routt, Grand, Jackson and Moffat Counties, CO.

Summary: EPA generally supports the suppression and control actions; however, EPA expressed environmental concerns regarding impacts from 15.3 miles of new roads and the effectiveness of preventative thinning to avert a predicted beetle epidemic.

ERP No. F–FHW–F40388–WI US–14/61 Westby—Virogua Bypass Corridor Study, Transportation Improvements, Funding and US Army COE Section 404 Permit, Cities of Virogua and Westby, Vernon County, WI.

Summary: EPA has no objection to the proposed action.

ERP No. F–NPS–J65346–WY Devil's Tower National Monument General Management Plan, Implementation, Crook County, WY.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–UAF–J11019–MT Montana Air National Guard Air-to-Ground Training Range Development for Use by the 120th Fighter Wing (120th FW), Implementation, Phillips and Blaine Counties, MT.

Summary: EPA continues to express environmental concerns regarding impacts to people and wildlife from noise and visual stimuli from low altitude F–16 flights and other range activities.

ERP No. F–USA–J13000–CO Pueblo Chemical Depot, Destruction of Chemical Munitions, Design, Construction, Operation and Closure of a Facility, Pueblo County, CO.

Summary: No formal comment letter was sent to the preparing agency.

Dated: May 21, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–13154 Filed 5–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6629–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/compliance/nepa.*

Weekly receipt of Environmental Impact Statements

Filed May 13, 2002 Through May 17, 2002

Pursuant to 40 CFR 1506.9.

EIS No. 020191, Draft EIS, AFS, MT, Black Ant Salvage Project, To Salvage 739 Acres of Dead Merchantable Trees from the Lost Fork Fire of 2001, Lewis and Clark National Forest, Meagher Basin County, MT, *Comment Period Ends:* July 08, 2002, *Contact:* Scott Hill (406) 566–2292.

EIS No. 020192, Draft EIS, FHW, WY, US 287/26 Improvements Project, From Moran Junction to 12 Miles West of Dubois, the Roadway Traverses thru the Bridger-Teton and Shoshone National Forests and Grand Teton National Park, NPDES and COE Section 404 Permits, Teton and Fremont Counties, WY, *Comment Period Ends:* August 28, 2002, *Contact:* Galen W. Hesterberg (307) 772–2012.

EIS No. 020193, Final EIS, TPT, CA, Presidio Trust Implementation Plan (PTIP), An Updated Plan for the Area B of the Presidio of San Francisco, Implementation, San Francisco Bay Area, Marin County, CA, *Wait Period Ends:* June 24, 2002, *Contact:* John Pelka (415) 561–5300.

EIS No. 020194, Final EIS, FAA, IL, South Suburban Airport, Proposed Site Approval and Land Acquisition, For Future Air Carrier Airport, Will and Kankakee Counties, IL, *Wait Period Ends:* June 24, 2002, *Contact:* Denis Rewerts (847) 294–7195.

EIS No. 020195, Final EIS, HUD, NY, 1105–1135 Warburton Avenue, River Club Apartment Complex Development and Operation, Funding, City of Yonkers, Westchester County, NY, *Wait Period Ends:* June 24, 2002, *Contact:* Lee Ellman (914) 377–6557.

EIS No. 020196, Draft EIS, FHW, WI, US 10 Highway Improvements between Marshfield and Appleton, Trestik Road—CTH ''K'' (Stevens Point Bypass), Funding and COE Section 404 Permit, Portage County, WI, *Comment Period Ends:* July 08, 2002, *Contact:* Wesley Shemwell (608) 829–7521.

EIS No. 020197, Draft EIS, FRC, ID, C.J. Strike Hydroelectric Project (FERC NO. 2055), Application for a new License, Located on the Snake River and Bruneau River, Owyhee and Elmore Counties, ID, *Comment Period Ends:* July 08, 2002, *Contact:* John Blair (202) 219–2845.

EIS No. 020198, Draft Supplement, NRC, SC, Generic EIS—Catawba Nuclear Station, Unit 1 and 2 (Catawba), Renew the Operating Licenses (OLs) for an Additional 20-Year Period, Supplement 9 to NUREG–1437, York County, SC, *Comment Period Ends:* August 23, 2002, *Contact:* James Wilson (301) 415–1108.

EIS No. 020199, Draft EIS, BLM, WY, Pittsburg and Midway Coal Mining Proposal (WYW148816), Exchange Private Owned Land P&M for Federally-Owned Coal, Lincoln, Carbon and Sheridan Counties, WY, *Comment Period Ends:* July 23, 2002, *Contact:* Nancy Doelger (307) 261–7627. This document is available on the Internet at: (*www.wy.blm.gov*).

EIS No. 020200, Draft EIS, DOE, Programmatic EIS—Hanford Site Solid (Radioactive and Hazardous) Waste Program (DOE/EIS–0286D), Proposal to Enhance Waste Management Practices, Low-Level Radioactive; Low-Level Mixed; Transuranic Radioactive; Richland, Benton County, WA *Comment Period Ends:* August 22, 2002, *Contact:* Michael S. Collins (509) 376–6536.

EIS No. 020201, Final EIS, MMS, AK, Liberty Development and Production Plan, Beaufort Sea Oil and Gas Development, Implementation, To Transport and Sell Oil to the U.S. and World Markets, Right-of-Way Application, Offshore Beaufort Sea Marine Environment and Onshore North Slope of Alaska Coastal Plan, AK, *Wait Period Ends:* June 24, 2002, *Contact:* George Valiulis (703) 787–1662.

EIS No. 020202, Final Supplement, FHW, CA, Devil's Slide Bypass Improvement, CA–1 from Half Moon Bay Airport to Linda Mar Boulevard, Preferred Alternative Estimated Future Project—Generated Noise Study, Funding, Pacifica and San Mateo Counties, CA, *Wait Period Ends:* June 24, 2002, *Contact:* Bill Wong (916) 498–5042.

EIS No. 020203, Final EIS, SFW, NV, Stillwater National Wildlife Refuge Complex Comprehensive Conservation Plan and Boundary Revision, Implementation, Churchill and Washoe Counties, NV, *Wait Period Ends:* June 24, 2002, *Contact:* Kim Hanson (775) 423–5128.

EIS No. 020204, Draft EIS, NRC, NC Generic EIS—McGuire Nuclear Power Station, Units 1 and 2, Supplement 8 to NUREG–1437, Located on the Shore of Lake Norman, Mecklenburg County, NC, *Comment Period Ends:* August 02, 2002, Andrew Kugler (301) 415–2828. The above NRC EIS should have appeared in the 05/17/2002 **Federal Register**. The 75 day Comment Period Request by the Agency will end on August 02, 2002.

Amended Notices

EIS No. 0210305, Draft Supplement, FAA, MN, Flying Cloud Airport, Substantive Changes to Alternatives and New Information, Extension of the Runways 9R/27L and 9L/27R, Long-Term Comprehensive Development, In the City of Eden Prairie, Hennepin County, MN, *Comment Period Ends:* June 19, 2002, *Contact:* Glen Orcutt (612) 713–4354. Revision of FR Notice Published on 08/24/2001: CEQ Review Period Ending on 08/17/2001 has been Extended to 06/19/2002.

EIS No. 020181, Draft EIS, NRC, VA, Generic EIS—North Anna Power Station, Units 1 and 2, Supplement 7 to NUREG–1437, License Renewal, VA, *Comment Period Ends:* August 01, 2002, *Contact:* Andrew Kugler (301) 415–2828. Revision of FR Notice Published on 05/17/2002: CEQ Comment Date has been corrected from 07/01/2002 to 08/01/2002.

EIS No. 020141, Draft EIS, COE, WV, Spruce Mine Number 1 Surface Mining Construction Project, US Army COE Section 404 and NPDES Permits Issuance, Blair, Logan County, WV, *Comment Period Ends:* May 28, 2002, *Contact:* James M. Richmond (304) 529–5210. Revision of FR Notice Published on 04/12/2002: Officially Withdrawn by letter date 04/11/2002.

EIS No. 020184, Final Supplement, GSA, CA, San Diego—United States Courthouse Annex Street Project, Site Selection and Construction, New Information concerning Addition of the Union Street with Hotel San Diego Facade and Lobby Alternative, Central Business District (CBD), City of San Diego, San Diego County, CA, *Wait Period Ends:* June 17, 2002, *Contact:* Rosanne Nieto (415) 522–3490. Revision of FR Notice Published on 05/17/2002: Wait Period Ends is Corrected from 06/07/2002 to 06/17/2002.

Dated: May 21, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–13155 Filed 5–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7217–8]

EPA Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Drinking Water Committee (DWC) of the US EPA Science Advisory Board (SAB) will meet via public teleconference on the date and at the time noted below. All times noted are Eastern Time. The meeting is open to the public, however, seating is limited and available on a first come basis. *Important Notice*: Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

The Drinking Water Committee of the US EPA Science Advisory Board (SAB), will conduct a public teleconference meeting on June 11, 2002. The meeting will begin at 1 pm and adjourn no later than 4 p.m. the same day. The meeting will be coordinated through a conference call connection in Room 6013 in the USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW., Washington, DC 20004. The public is encouraged to attend the meeting in the conference room noted above, however, the public may also attend through a telephonic link if lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Mary Winston at (202) 564–4538, or via e-mail at *winston.mary@epa.gov*. Presentation slides will be placed on the SAB Web site (*www.epa.gov/sab/*) prior to the start of the meeting.

Purpose of the Meeting—The primary purpose of this meeting will be for staff from EPA's Office of Water to provide background briefings sufficient for the Committee to develop a systematic plan for responding to the agency request on two topics: (1) Six-Year Review of Existing Regulations Notice of Intent on Review Decisions (6-YR) and (2) Contaminant Candidate List Notice of Intent on Regulatory Determinations (CCL1). The review will NOT be conducted on this conference call. A draft agenda for this meeting will be available from the DFO or Management Assistant approximately one week before the meeting.

Background Information about the 6-Year Review of Existing Regulations: EPA recently announced its preliminary revise/not revise decisions for 68 chemical National Primary Drinking Water Regulations (NPDWRs) and the Total Coliform Rule (TCR) (67 FR 19030; April 17, 2002). The Safe Drinking Water Act (SDWA) requires EPA to periodically review existing NPDWRs and, if appropriate, revise them [Section 1412(b)(9) of SDWA, as amended in 1996]

The primary goal of the Six Year Review is to identify, prioritize and target candidates for regulatory revision that are most likely to result in an increased level of public health protection and/or a substantial cost savings while maintaining the level of public health protection. To address this goal, EPA, in consultation with the National Drinking Water Advisory Council (NDWAC) and other stakeholders, developed a systematic approach, or protocol, for the review of existing NPDWRs. The protocol focused on several key elements, including: (i) Health effects (to identify potential changes in the Maximum Contaminant Level Goal (MCLG or health effects goal) and perhaps to the maximum contaminant level (MCL)); (ii) analytical feasibility (to identify potential changes in analytical feasibility for those contaminants where the Maximum Contaminant Level (MCL) was limited by the measurement feasibility and to review analytical feasibility limitations for contaminants that may have potential changes in the MCLG); (iii) treatment (to evaluate treatment feasibility if potential changes in MCLG/MCL are likely and to evaluate if there is an indication that the best available technology (BAT) or treatment technique (TT) requirements need review); (iv) other regulatory changes (to identify any potential non-MCLG/MCL or non-TT types of changes that apply to public water systems, are ready for rulemaking and are not being addressed under alternative mechanisms); (v) occurrence and exposure (to evaluate the extent of occurrence and exposure where a potential change in health or technology provides a potential basis for revising the regulation); and (vi) economics (to qualitatively consider economic impacts where a health or

technology basis may exists for revising the regulation). After receiving public comments and conducting a stakeholders meeting, EPA intends to publish final revise/not revise decisions by Fall of 2002.

Tentative Charge for 6 Year Review of Existing Regulations—EPA is interested in having the EPA Science Advisory Board's advice on: (1) Whether EPA consistently applied its protocol for making determinations of whether or not to revise existing regulations, and (2) whether, in the SAB's view, EPA appropriately documented its analyses in support of the March announcement.

Background Information on the Contaminant Candidate List Regulatory Determinations—The Safe Drinking Water Act (SDWA), as amended in 1996, requires EPA to publish a list of contaminants (referred to as the Contaminant Candidate List, or CCL) to assist in priority-setting efforts. SDWA also requires the Agency to select five or more contaminants from the current CCL and determine, by August 2001, whether or not to regulate these contaminants with a National Primary Drinking Water Regulation (NPDWR). EPA intends to announce its preliminary determination decisions in the **Federal Register** prior to June 11, 2002.

The CCL was developed with considerable input from the scientific community and stakeholders and published in March of 1998. The CCL contains 60 contaminants (50 chemicals and 10 microbes) that are not subject to any current or proposed NPDWRs. In 1998, 20 of the 60 contaminants were classified as priorities for regulatory determination because EPA believed at that time that there were sufficient data to evaluate both exposure and risk to public health, and to support a determination of whether or not to proceed to promulgation of an NPDWR. Since then, 12 of the 20 priority contaminants were found to have insufficient information to support a regulatory determination. In addition, sodium was added to the list of regulatory determination priorities.

There are 9 contaminants that have sufficient data and information to consider a determination of whether or not to regulate: (i) Acanthamoeba (microscopic amoeba commonly found in the environment); (ii) aldrin and dieldrin (banned insecticides, used primarily on corn and cotton); (iii) hexachlorobutadiene (used primarily to make rubber compounds); (iv) manganese (essential nutrient, occurs naturally, and has a variety of uses); (v) metribuzin (herbicide used primarily on soybeans, potatoes, and alfalfa); (vi) naphthalene (intermediary manufacturing product and moth repellent; (vii) sodium (essential nutrient, naturally occurring element); and (viii) sulfate (present in the diet, naturally occurring element). After receiving public comments and conducting a stakeholders meeting EPA intends to publish a final determination (Fall of 2002). If EPA determines that regulations are necessary, they must be proposed within two years and promulgated eighteen months after the proposal.

SDWA requires consideration of three areas when EPA makes a determination to regulate: (i) Projected adverse health effects, (ii) extent of contaminant occurrence, and (iii) whether regulation would present a meaningful opportunity for health risk reduction (see SDWA section 1412(b)(1)(A)) when EPA makes a determination to regulate.

EPA's evaluation approach is based on recommendations from National Research Council (NRC) and the National Drinking Water Advisory Council (NDWAC). For each of the nine contaminants, EPA evaluated: (i) The sufficiency of current analytical and treatment methods; (ii) the best available peer reviewed data on health effects; and (iii) analytical records on contaminant occurrence. For those contaminants with adequate methods, as well as health effects and occurrence data, EPA employed an approach to assist in making preliminary regulatory determinations that follows the themes recommended by the NRC and NDWAC to satisfy the three SDWA requirements under section 1412(b)(1)(A)(i)–(iii).

Specifically, EPA characterized the human health effects that may result from exposure to a contaminant found in drinking water, and based on this characterization, estimated a health-related bench-mark level for each contaminant. Then, for a given contaminant EPA estimated the number of public water systems and population served by those systems above these bench-mark values, and the geographic distribution using a large number of state occurrence data that broadly reflect national occurrence. Use and environmental release information, and ambient water quality data, were used to augment the State data and evaluate the likelihood of contaminant occurrence. The findings from these evaluations were used to make a preliminary determination on whether to regulate a contaminant based on the three SDWA statutory requirements.

Tentative Charge for Contaminant Candidate List (CCL) Regulatory Determinations—EPA is interested in having the SAB's advice on (i) whether the protocol used by EPA in making regulatory determinations appear to be reasonable, appropriate and consistently applied, in light of limitations of available data and information, and (ii) if the data set used for both health assessments and occurrence assessments is adequate for responding to the 3 statutory requirements for determinations of whether or not to regulate a contaminant on the CCL.

Availability of Review Materials: The availability of background materials for these topics is as follows: a) Six-Year project; contact Wynne Miller by telephone at (202) 564–4887 or by email at *miller.wynne@epa.gov*; b) CCL1 project; contact Karen Wirth by telephone at (202) 564–5246 or by email at *wirth.karen@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (3 minutes or less) must contact Thomas Miller, Designated Federal Officer, EPA Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone (202) 564–4558; FAX (202) 501–0582; or via e-mail at *miller.tom@epa.gov.* Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Miller no later than noon Eastern Time on Tuesday, June 4, 2002.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments*: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the

SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

General Information—Additional information concerning the EPA Science Advisory Board, its structure, function, and composition, may be found on the SAB Web site (*http://www.epa.gov/sab*) and in The FY2001 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our Web site.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Miller at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: May 20, 2002.

A. Robert Flaak,

Acting Staff Director, EPA Science Advisory Board.

[FR Doc. 02–13120 Filed 5–23–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0084; FRL–7180–9]

Pesticides; Draft Guidance for Pesticide Registrants on False or Misleading Pesticide Product Brand Names; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Extension of comment period.

SUMMARY: In the **Federal Register** of March 28, 2002, EPA published a document announcing the availability of and sought public comment on a draft Pesticide Registration (PR) Notice titled, ''False or Misleading Pesticide Product Brand Names.'' PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. The draft PR Notice provides guidance to registrants, applicants, and the public as to what product brand names may be false or misleading, either by themselves or in association with company names or trademarks. In response to a request from stakeholders, EPA is extending the comment period for 60 days, until August 1, 2002.

DATES: Comments, identified by docket ID number OPP–2002–0084, must be received on or before August 1, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0084 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Jeff Kempter, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5448; fax number: (703) 308–6467; e-mail address: kempter.carlton@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general although this action may be of particular interest to those persons who are required to register pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You may obtain an electronic copy of all PR Notices, both final and draft, at http://www.epa.gov/opppmsd1/PR_Notices.

2. *Fax-on-demand*. You may request a faxed copy of the draft PR Notice titled, ''False or Misleading Pesticide Product Brand Names,'' by using a faxphone to call (202) 564–3119 and selecting item 6146. You may also follow the automated menu.

3. *In person*. The Agency has established an official record for this action under docket ID number OPP–2002–0084. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0084 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through

Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0084. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is EPA Taking?

In the **Federal Register** of March 28, 2002 (67 FR 14941) (FRL–6809–9), EPA announced the availability of a draft PR Notice titled, ''Pesticides; Draft Guidance for Pesticide Registrants on False or Misleading Pesticide Product Brand Names.'' The Agency provided a 60–day comment period, which was scheduled to end May 28, 2002. EPA is extending the comment period for the draft PR Notice for an additional 60 days, until August 1, 2002.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 20, 2002.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 02–13109 Filed 5–23–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0075; FRL–7178–2]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the amended filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number OPP–2002–0075, must be received on or before June 24, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0075 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6100; e-mail address: stanton.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' ''Regulations and Proposed Rules,''and then look up the entry for this document under the ''**Federal Register**'' —Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–2002–0075. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable

comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–2002–0075 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–2002–0075. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 16, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by Bayer Corporation and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Bayer Corporation

PP 0F6084

In the **Federal Register** of March 1, 2000 (65 FR 11052) (FRL–6489–9), EPA published a Notice of Filing of a Pesticide Petition (PP 0F6084) from Bayer Corporation, 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120-0013, proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of cyfluthrin, cyano (4-fluoro-3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl cyclopropane carboxylate, in or on the raw agricultural commodity mustard greens, greens at 7.0 parts per million (ppm); lettuce, leaf at 3.0 ppm; lettuce, head at 2.0 ppm; and Head and Stem Brassica (Subgroup 5A) at 2.0 ppm. EPA has received an amendment to pesticide petition 0F6084 from Bayer Corporation, increasing the proposed tolerance for Head and Stem Brassica (Subgroup 5A) to 2.5 ppm. The proposed tolerances for mustard greens, leaf lettuce and head lettuce remain unchanged. EPA has determined that the amended petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the

petition. Additional data may be needed before EPA rules on the petition.

Summary information on cyfluthrin residue chemistry, toxicological profile, aggregate exposure, cumulative effects, safety determination and international tolerances was published in the original Notice of Filing of Pesticide Petition 0F6084 (65 FR 11052, March 1, 2000) and most recently in the **Federal Register** of May 17, 2001 (66 FR 27465) (FRL–6781–8).

[FR Doc. 02–13122 Filed 5–23–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7217–9]

Notice of Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act, Utah Transit Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: Notice is hereby given that a proposed Prospective Purchaser Agreement (''PPA'') was executed by the U.S. Environmental Protection Agency on March 18, 2002, subject to final approval by the U.S. Department of Justice. The proposed PPA would resolve potential claims under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606 and 9607, against the Utah Transit Authority (''UTA''), a public transit district and a political subdivision of the State of Utah, which is acquiring a railroad corridor and related property from the Union Pacific Railroad in order to construct a public transit ''light-rail'' system serving the greater Salt Lake area (the ''Property''). By entering into the PPA, UTA agrees to provide EPA access to the Property, complete an environmental audit and conduct environmental sampling of the Property, to characterize soil which is excavated to construct the ''light-rail'' system, and to properly handle or dispose of soils which are found to be contaminated.

For Fifteen (15) days following the date of publication of this document, the Agency will receive written comments relating to the proposed settlement. Comments should be addressed to Richard Sisk (8ENF–L), Attorney, U.S. Environmental Protection Agency, Region 8, Suite 300, 999 18th Street, Denver, Colorado 80202. and should refer to *In the Matter of Utah Transit Authority*.

Availability: The proposed settlement is available for public inspection at the EPA Library, U.S. Environmental Protection Agency, Region 8, First Floor, 999 18th Street, Denver, Colorado 80202. A copy of the proposed Agreement may be obtained from Richard Sisk (8ENF–L), Attorney, U.S. Environmental Protection Agency, Region 8, Suite 300, 999 18th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Richard Sisk (8ENF–L), Attorney, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Denver, Colorado 80202. (303) 312–6638.

It is so agreed:

Dated: May 9, 2002.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance, and Environmental Justice, Region 8.

[FR Doc. 02–13121 Filed 5–23–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE BOARD

[No. 2002–N–5]

Notice of Public Hearing on Federal Home Loan Banks of Cincinnati and Chicago Capital Plans

AGENCY: Federal Housing Finance Board.

ACTION: Notice of public hearing.

SUMMARY: Notice is hereby given that the Federal Housing Finance Board (Finance Board) will hold the following public hearing:

Time and Date of Hearing: Wednesday, June 5, 2002 at 10 am EDT.

Place: Cleveland Airport Marriott, 4277 West 150th Street, Cleveland, OH 44135.

Agenda: The boards of directors of the Cincinnati and Chicago FHLBanks have submitted proposed capital plans which differ from most other plans. The Finance Board wishes an opportunity to better understand the judgments and decisions made by the boards of each Bank in designing the proposed plans. In particular, the Finance Board expects to learn more about: The business strategies embodied in the plans; the methods used by each board to solicit member views; how the details of the proposed plans will be disclosed to members; and how each plan will operate, if approved and implemented. The Finance Board also hopes to learn how each Bank's board of directors will monitor and maintain capital sufficiency, if its proposed plan is approved.

Only members of the board of directors of each Bank, as designated by the chair of each board, may testify in the hearing. Written submissions are welcome from all other interested parties. All testimony, including the written statements of each Bank, must be submitted in electronic format to the Finance Board no later than 48 hours before the hearing. In addition, 100 copies of testimony submitted for the record and of each Bank's statement must be delivered to the Cleveland Airport Marriott, Attention: Federal Housing Finance Board/June 5, 2002, before the start of the hearing.

Status: This hearing will be open to the public.

ADDRESSES: Send testimony and comments to Elaine L. Baker, Secretary to the Board, by electronic mail to bakere@fhfb.gov, or by regular mail to the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address. The 100 copies of testimony for the hearing must be delivered to the Cleveland Airport Marriott, Attention: Federal Housing Finance Board/June 5, 2002.

FOR FURTHER INFORMATION CONTACT: Elaine L. Baker, Secretary to the Board, 202–408–2837, or Thomas D. Casey, Counsel to the Chairman, 202–408–2957.

Dated: May 22, 2002.

James L. Bothwell,

Managing Director.

[FR Doc. 02–13281 Filed 5–23–02; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank

indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 7, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Kettering Family, Steven Kettering, Lake View, Iowa; Michael Kettering, Lake View, Iowa; and June Kettering Manary, Livingston, Texas; to acquire voting shares of JEMS, Inc., Lake View, Iowa, and thereby indirectly acquire voting shares of Farmers State Bank, Lake View, Iowa.

Board of Governors of the Federal Reserve System, May 20, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–13031 Filed 5–23–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 17, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309-4470:

1. First Georgia Holding, Inc., Brunswick, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Georgia Bank, Brunswick, Georgia.

2. Peoples Community BancShares, Inc., Sarasota, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Community Bank of the West Coast, Sarasota, Flordia.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Metropolitan Bank Group, Inc., Chicago, Illinois; to retain more than 5 percent of the voting shares of Upbancorp, Inc., Chicago, Illinois, and thereby indirectly retain voting shares of Uptown National Bank of Chicago, Chicago, Illinois.

Board of Governors of the Federal Reserve System, May 20, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–13032 Filed 5–23–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary, Assistant Secretary for Planning and Evaluation

Notice of Funding Availability for Policy and Research Grants (State Innovation Grants)

AGENCY: The Office of the Assistant Secretary for Planning and Evaluation (ASPE), HHS.

ACTION: Announcement of the availability of funds and request for applications from States for innovation grants.

SUMMARY: ASPE invites state agencies to submit competitive grant applications for financial assistance in order to plan for, or implement, innovative approaches for the delivery of health and human services. This announcement has 2 tracks. Track 1 is for demonstration grants; track 2 is for planning grants. States may submit applications to either or both tracks. There is no limit on the number of applications that a state may submit.

The Catalog of Federal Domestic Assistance Number: The CFDA number is 93.239.

Closing Date: The closing date for submitting applications under this announcement is July 23, 2002. Please e-mail Brenda Benesch at *Brenda.Benesch@hhs.gov* by June 13, 2002, to inform the government of your intent to submit an application. Please include the proposed title of the project and the name of the agency submitting the application. Please put ''intent to submit—track 1'' or ''intent to submit—track 2'' in the subject line of your email. Providing notice of intent to submit is not a requirement for submitting an application. However, a notice of intent to submit will help the federal government in the planning for the review process.

Mailing Address: Applications should be submitted to Michael J. Loewe, Deputy Grants Management Officer, Grants Management Branch, National Institute of Child Health and Human Development, U.S. Department of Health and Human Services, 6100 Executive Boulevard, Room 8A01, Bethesda Maryland 20892–7510 (Regular Mail), Rockville Maryland 20852 (Express Mail), Phone: (301) 435–6995. Administrative questions will be accepted and responded to up to ten working days prior to closing date of receipt of applications.

You will receive e-mail confirmation to notify you that your application was received within 14 days of the closing date. If you do not receive confirmation within 14 days of the closing date, please contact: Michael J. Loewe at the address above.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the information on the ASPE World Wide Web Page is accurate and complete, it is provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete. Any amendments to this announcement will be published in the **Federal Register** as well as on the ASPE World Wide Web Pages at *http://aspe.hhs.gov/funding.htm*. We encourage applicants to check periodically to see if any amendments have been published. We will also post answers to questions that we receive about the announcement that are of general interest at the above address.

FOR FURTHER INFORMATION CONTACT: Administrative questions should be directed to the Michael Loewe at the National Institute of Child and Human Development (NICHD) at the address or phone number listed above. Technical

questions should be directed to Brenda Benesch, either by telephone (202–260–0382), fax (202–690–6562), e-mail (*Brenda.Benesch@hhs.gov*) or in writing at the following address, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 450G, Hubert H. Humphrey Building, Washington, DC 20201. If you send your question(s) in writing, please call to confirm receipt. Technical questions will be accepted and responded to up to ten working days prior to the closing date of receipt of applications.

ADDRESSES: Application materials are included in this package and are also available from the ASPE World Wide Web site: *http://aspe.hhs.gov/funding.htm* or by calling Michael Loewe at (301) 435–6995.

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts: Part I: Background—Legislative authority, Background information, Purpose, Technical assistance and process evaluation; Part II: Project and Applicant Eligibility—Eligible applicants, Available funds, Budget and project period, and Matching requirements; Part III: The Review Process—Intergovernmental review, Initial screening, and Competitive review and evaluation criteria; Part IV: The Application—Application development, and Application submission, Disposition of applications, and Components of a complete application; Part V: Questions and Answers; and Part VI: Appendix.

Part I. Background

A. Legislative Authority

This announcement is authorized by section 1110 of the Social Security Act (42 U.S.C. 1310) and section 301 of the Public Health Service Act and awards will be made from funds appropriated under the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2002 (Pub. L. 107–116).

B. Background Information

New approaches to integrating diverse funding streams, expanding services to new populations, or redesigned service delivery systems often emerge from innovations at the state or local level. Secretary Thompson initiated this grant program to stimulate states to develop new and creative approaches to program planning and health and human service delivery.

As laboratories for innovation, states are uniquely positioned to develop approaches for providing health and human services more efficiently. This grant program will encourage such creativity. It will build on activities already taking place at the state and local levels to devise better coordinated systems and programs tailored to the needs of specific populations. There are a broad array of interesting models focusing on particular issues, such as enhancing gateways to services (*e.g.,* schools); promoting family formation, responsible fatherhood, and responsible child-rearing in the context of marriage; improving outcomes for children and youth; facilitating the involvement of faith-based and community-based groups in the delivery of health and social services; consumer-directed approaches to home and community-based long-term care services; and providing culturally competent services. These, and like models, could be considered.

The grants will be administered by ASPE in conjunction with the National Institute of Child Health and Human Development. We will also facilitate information exchange among grantees, other States, and others interested in new and creative ways to deliver health and/or human services. This could be in the form of technical assistance, a conference, a website, and/or briefings.

C. Purpose

This competitive grant program will allow selected States to design and/or demonstrate new models for delivering health care, long-term care, and/or human services to low-income adults, families, and children. We are interested in funding applicants that demonstrate their interest in implementing innovative ideas. The goals of this initiative are twofold: to increase the effectiveness of health and human services by fostering innovative approaches to service delivery; and to share information gained through this program with other state agencies and interested parties so that they may learn about, and potentially replicate, innovative approaches.

There are two ''tracks'' under this announcement. Track 1 applicants are expected to be those state agencies that are ready to implement proposed innovations or expand existing innovative strategies. Track 1 applicants likely will have innovative strategies developed and most or all aspects of the programs or services will have been piloted, if not fully implemented. Track 2 applicants are expected to be those state agencies that have innovative ideas, but need time for further planning to fully develop or finalize operational plans.

We are particularly interested in multi-disciplinary projects that seek to better coordinate healthcare, long-term care, and human services systems and services. We encourage states to submit ideas of their own choosing, but we have noted some examples below and in the appendix. States are not required to use any of the suggested ideas.

A. Streamlined Access to Health Care and/or Human Services and Benefits

B. State Data Enhancements

C. Comprehensive Support Services for Children and Families

D. Long-Term Care Services and Resources

By participating in this grant program, states will help to provide much-needed, credible information to government officials and others about how their programs affect families and children. HHS hopes that its sponsorship of this grant program will provide an opportunity for states to learn from one another's successes and experiences.

D. Technical Assistance and Process Evaluation

ASPE will fund an independent contractor to provide technical assistance. We expect that the contractor will provide on-site technical assistance and develop technical assistance and training materials for States. An independent process evaluation will also be conducted with ASPE funds. The process evaluation will, at a minimum, address key research questions:

1. What are the issues and challenges associated with implementing and operating the funded projects?

2. What are the expected short and long-term implications of this intervention for clients, as well as for agencies involved?

3. What other innovative ideas/projects may grow out of each funded project and the program as a whole?

The evaluation will address:

- Strategies undertaken to implement the innovation (*e.g.* participation of community representatives, client participation, partnerships with local and state government agencies, *etc.*)
- Process and other outcomes for clients
- Changes in communication/collaboration between local agencies, states, and providers
- Potential organizational changes resulting from ideas generated through the design or implementation process (*i.e.* state or local policy changes, new programs initiated, fostering of community collaboration)
- Potential for further research and evaluation on outcomes for service population

We expect that the work undertaken through this evaluation will result in important operational lessons and sound information about implementing innovative approaches. ASPE expects that this investment will benefit low-income clients and families, state and local health and human service administrators, others who work with low-income people, and the general public.

Part II. Project and Applicant Eligibility

A. Eligible Applicants

The District of Columbia and any of the 50 states are eligible to apply for funding.

In order to be considered under this announcement, applicants under either Track 1 or 2 should indicate their willingness and intention to participate in a process evaluation, under the direction of and with assistance from HHS and its contractor.

B. Available Funds

Approximately $2.5 million is expected to be available from ASPE funds appropriated for fiscal year 2002. We estimate that this level of funding will support between 4–6 Track 1 demonstration grants and between 10 and 20 Track 2 planning grants.

C. Budget and Project Period

Awards made under this announcement for Track 1 will be for up to 12-month budget periods. States may propose projects up to 36 months in duration. Subject to the availability of funds, grantees with projects which last longer then 12 months will be allowed to submit subsequent applications for additional funding, at a lower level, for the additional budget period(s). Decisions on subsequent funding will be made on a noncompetitive basis based on the availability of funds, the adequate progress of the grantee, and such other similar criteria as the Department determines. Any requested additional funding will be reviewed to determine that the continuation of the project is consistent with the purposes of the announcement. Awards made under this announcement for Track 2 will be for up to 12-month budget periods and 17 month project periods.

After award, any purchase of computer hardware or software needs to be requested in writing by the grantee and approved in writing by the ASPE project officer and the grants officer. Purchases of computer hardware or software for routine uses will not be considered. *See* section Part IV, Section II for more information on review criteria for MIS/Data System proposals.

No funds may be paid as profit to grantees or subgrantees, i.e., any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.81). Grant monies can be used for services to the extent that the cost of the services cannot be covered under existing programs.

D. Matching Requirements

Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For example, a state with a project with a total budget (both direct and indirect costs) of $500,000 may request up to $450,000 in federal funds. Matching requirements cannot be met with funds from other federally-funded programs.

If a proposed project activity has approved funding support from other funding sources, the amount, duration, purpose, and source of the funds should be indicated in materials submitted under this announcement. If completion of the proposed project activity is contingent upon approval of funding from other sources, the relationship between the funds being sought elsewhere and from ASPE should be discussed in the budget information submitted as a part of the abstract. In both cases, the contribution that ASPE funds will make to the project should be clearly presented.

Part III. The Review Process

A. Intergovernmental Review

State Single Point of Contact (E.O. No. 12372)

DHHS has determined that this program is not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

B. Initial Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement (2) the applicant is eligible for funding, (3) must include assurance that they and other relevant participating organizations will be willing to field test strategies and to participate in a process evaluation (this must be indicated on the page with the project abstract—see part IV, section E, 8(a)), and (4) is within the page limit (*see* part III, section C). Note that applications exceeding the page limit will not be reviewed further and will be ineligible for funding.

C. Competitive Review and Evaluation Criteria

Applications that pass the initial ASPE pre-review screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The evaluation criteria are designed to assess the quality of the proposed project and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications that are responsive to the evaluation criteria as provided in this program announcement.

In order to ensure that the interests of the Federal Government are met, in making the final selections, ASPE may consider additional factors, in addition to the review criteria identified below such as the applicants' capacity for innovation (we encourage states with historically limited capacity to apply for grants), the potential impact of the innovation on the target population, the potential for building upon funded activities, the extent of partnerships with local entities, the overall diversity of program activities within the applicant pool, and the overall diversity of geographic areas within the applicant pool.

Although the review criteria are the same for applications submitted under either Track 1 or Track 2, the level of detail contained in the application is expected to be greater for Track 1 applications given that the applicant has likely progressed further in formulating the proposed approach (*e.g.,* identifying questions to be addressed, developing and implementing retention and/or advancement strategies, identifying data sources) and that more funds are available. Track 1 applications should be 10–20 pages, and Track 2 applications should be 5–10 pages. Applications exceeding the page limit will not be reviewed. Applicants are requested to be concise. More information about application submission is provided under Part IV, below.

Proposed projects will be reviewed using the following evaluation criteria:

(1) *Approach:* (40 POINTS)

The application will be judged on the extent to which the proposed approaches to project activities are

adequate and appropriate to meet the objectives for projects in this program as set out in this announcement. As a part of the proposed approach, the application should identify the key, relevant organizations that will be involved in project activity and describe operational relationships that exist or will be put into place among the state, local public, private and non-profit agencies, and any other entities. Plans for cross-agency collaboration should be clearly explained.

Track 1 applicants should include a discussion of the proposed approach for implementing and operating the innovative strategies identifying specific steps to be undertaken. Track 2 applicants should discuss the approach for implementing planning activities. If alternative strategies are already operating, the discussion should indicate how long they have been in place and ways in which they will be affected by the proposed innovation. For track 1, the approach should include a discussion of the time frame and action steps necessary before the project becomes operational (*e.g.,* staff must be trained over the next six months; partnerships with local agencies, non-profits, employers, *etc.* must be established, *etc.*) The application will be judged based on the extent to which the proposed project demonstrates a firm commitment of State, and/or local, and/or private funding and /or in-kind contributions dedicated to sustainability of the project, on the extent to which it is innovative, and on its potential for improving outcomes either in target populations or management of state programs.

The application should include a brief discussion of the location of the proposed project. Maps or other graphic aids may be attached. Applications should include appropriate information about the size of the target population in the proposed site/area and other data or information available that relate to the project activity.

It may be necessary for agencies to provide data to an evaluation contractor. The types of data likely to be required under this project include administrative data, including data on program attendance, or other participation data. Data may also be collected from program managers and staff and from individuals participating in the demonstration program. The proposed approach should indicate the availability of such data, the source of the data, the extent to which it can be obtained or accessed by the applicant organization, the existence of data exchange agreements with other agencies that are the source of needed data, and the willingness of the applicant agency to obtain data needed for the evaluation. Any limitations regarding data availability or access should be discussed, including any fees for data.

Any application for a project involving the use of personally-identifiable information about patients or clients that grantees collect should describe how the project intends to address the privacy and confidentiality issues presented by the data collection. The description should not include details of collection, consent, security and the like. It should describe the organizational and planning approaches that will ensure that the project addresses these issues in a thoughtful way, respectful of the patients' and clients' privacy and dignity, in accord with all applicable law, and, if appropriate, taking particular account of the special privacy issues created by systems that integrate or link administrative data across several programs that serve the same population.

Management Information Systems/ Data Enhancement—If one of the project's components includes the development of a management information system (MIS) or enhancement of data systems, please append a supplemental description of the existing system and the proposed enhancements (*If applicable, this section should be included as an appendix and should not be more than 3 pages. The appendix does not count toward the page limit*).

This supplemental information on MIS/data system development will be reviewed separately by a technical review panel. The supplemental descriptions should also include the following:

- The goals of the MIS/data project and how they fit into the overall goals and needs of the applicant's current system.
- The current and intended system, including plans to manage data and create or purchase software; connectivity such as wide area networks, web-based access, smart cards and expanded connections to existing mainframe systems; compliance with Health Insurance Portability and Accountability Act (HIPAA) requirements for patient privacy and confidentiality, and security plans.
- The implementation steps, the current status of implementation, and planned training for users of the system.
- The decision-making process for MIS including how the proposed activities were selected, who was consulted, and how ongoing decisions related to data elements and definitions will be reached.
- What is expected to be funded under the grant (hardware, software, personnel, consultants)?
- How system maintenance and upgrades will be sustained after the grant.

(2) Objectives and Need for Assistance: (15 points)

The applications should describe (1) issues and challenges which the applicant has considered and dealt with to date in designing and/or implementing strategies for system improvements, including an assessment of the current delivery system and the most urgent needs of the project's target population or system, and (2) the proposed innovation strategy and ways in which it will significantly enhance performance. A description of existing resources and programs for the target population, barriers in the current delivery system, and gaps in service delivery should also be included. The applicant should include any supporting data or available information which suggest why the innovation is needed. Applications will be judged on the relevance of the discussion to the program objectives set out within this announcement. The application will also be judged on the extent to which the innovation proposed will help to address the target population's needs, build the knowledge base, and have applicability to a range of states and localities.

(3) Results or Benefits Expected: (15 points)

The application should describe how the proposed innovation will address the identified needs and improve the delivery of services or activities. The application should identify specific outcome measures (goals) to be achieved through the innovation (Examples of innovative strategies are attached).

Goals should be tied to discrete, measurable objectives. Examples include: Increase in the proportion of participants entering jobs at higher wage levels; increased partnerships between agencies and employers to support working families; increased access to health and human services benefits; increased integration of programs or services targeting clients with multiple barriers; increased innovation related to ''consumer-directed'' approaches to home and community-based long-term care services; more rapid access to program and client date; etc. The application will be judged on the extent to which the proposed program design

or policies can be expected to achieve the stated project goals.

In committing to participate in a process evaluation, applicants should be able to report baseline information, including the size of the target population and the expected number of individuals or families to be served by the project, as appropriate. Interim and final program reports will be required.

(4) Staff and Position Data: (10 Points)

The application should include a listing of key individuals who will oversee and work on the project, specifically identifying the key individuals from the applicant agency who will serve as the primary contacts for ASPE and contractor staff, indicating their positions, areas of responsibility and authority, and the proportion of time that will be available for project activity.

Applications will be judged on the extent to which individuals with appropriate authority, positions, and experience will work on the project and the adequacy of time allocated for key staff to the project. In addition, the application will be judged on the extent to which there is a commitment to the project evidenced by the participation of senior state and local officials and managers and on the adequacy of the proposed plans for obtaining advice and direction regarding project work and involvement and assistance to resolve issues or problems, as appropriate.

(5) Adequacy of Workplan (10 points)

Track 1 applicants should provide details about how demonstration projects will be implemented, and Track 2 applicants should provide details about how the planning processes will evolve. Applications should delineate tasks for completing the work, indicate staff assignments for each task, and provide a schedule for completing each task. Applicants should also describe mechanisms that will be put in place to maintain quality control over the project. The application will be judged on the appropriateness and timeliness of the work schedule and tasks, staff assignments, and quality assurance plan.

(6) Budget Appropriateness: (10 points)

The application must include a narrative description and justification for proposed budget line items and demonstrate that the project's costs are adequate, reasonable and necessary for the activities or personnel to be supported. The budget and narrative should have a clear relationship to the approach. The budget must include 2 trips to Washington, DC. The application will be judged on the extent to which adequate staffing and other resources will be provided as required to successfully carry out the tasks and activities proposed. (Applicants should refer to the budget information presented in the Standard Forms 424 and 424A, which can be found at *http://aspe.hhs.gov/funding.htm*).

Part IV. The Application

A. Application Development

In order to be considered for an award under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ASPE. Application materials including forms and instructions are attached to this announcement. Additional copies are available from Brenda Benesch or may be obtained electronically from the ASPE World Wide Web site: *http://aspe.hhs.gov/funding.htm*

Applicants should refer to the attached application kit for instructions regarding which forms, certifications and assurances are required and for instructions on completing the forms and preparing and submitting the application. Each application package must include an *original and two copies* of the complete application. All pages of the narrative must be sequentially numbered and unbound.

Applications must be received in the following format:

- 12 point font size
- Single line spacing
- 1 inch top, bottom, left, and right margins
- Applications under Track 1 should be 10–20 pages. Applications submitted under Track 2 applications should be 5–10 pages. Page limits apply to items Section IV, E, 8(b–e) only; page limits do not include standard forms, certificates, and the like. Forms are available from Brenda Benesch or may be obtained electronically from the ASPE world Wide Web site: *http://aspe.hhs.gov/funding.htm.* Applications that are not received in the format described above and/or exceed the page limit, will not be reviewed. Applicants are requested to be concise. Applicants are encouraged not to attach or include bound reports or other documents.

B. Application Submission

1. Mailed applications postmarked after the closing date will be classified as late.

2. *Deadline.* The closing (deadline) date for submission of applications under Track 1 is July 23, 2002, and under Track 2 is July 23, 2002. Please e-mail Brenda Benesch at *Brenda.Benesch@hhs.gov* by June 13, 2002, to inform the government of your intent to submit an application. Please include the proposed title of the project and the name of the agency submitting the application. Please put ''intent to submit—track 1'' or ''intent to submit—track 2'' in the subject line of your email. Providing notice of intent to submit is not a requirement for submitting an application. However, a notice of intent to submit will help the federal government in the planning for the review process. U.S.P.S. mailed applications shall be considered as meeting the announced deadline if they are either received on or before the deadline date or postmarked on or before the deadline date and received by ASPE in time for the independent review to: Michael J. Loewe, Deputy Grants Management Officer, Grants Management Branch National Institute of Child Health and Human Development, U.S. Department of Health and Human Services, 6100 Executive Boulevard, Room 8A01, Bethesda Maryland 20892–7510 (Regular Mail), Rockville Maryland 20852 (Express Mail), Phone: (301) 435–6995 Fax: (301) 402–0915.

If applicants use a commercial mail service, they must ensure that a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application. To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m. EST, at the U.S. Department of Health and Human Services, Grants Management Branch National Institute of Child Health and Human Development, U.S. Department of Health and Human Services, 6100 Executive Boulevard, Room 8A01 Bethesda Maryland 20892–7510 (Regular Mail), Rockville Maryland 20852 (Express Mail)) The address must appear on the envelope/package containing the application with the note ''Attention: (Michael J. Loewe, Deputy Grants Management Officer ''

(Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

An application sent via the U.S. Postal Service will be considered as having met the deadline if it is postmarked before midnight three days prior to July 23, 2002, and received in time to be considered during the competitive review process (within two weeks of the deadline).

Applications transmitted by fax or through other electronic means will not be accepted regardless of date or time of submission or receipt.

3. *Late applications.* Applications that do not meet the criteria above are considered late applications. NICHD shall notify each late applicant that its application will not be considered in the current competition.

4. *Extension of deadlines.* NICHD may extend an application deadline when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of the mail service, or in other rare cases. Determinations to extend or waive deadline requirements rest with Michael J. Loewe , Deputy Grants Management Officer, Grants Management Branch, National Institute of Child Health and Human Development.

C. Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary for Planning and Evaluation will notify the applicants of the disposition of their applications. If approved, a signed notification of the award will be sent to the business office named in the ASPE checklist.

3. *The Assistant Secretary's Discretion.* Nothing in this announcement should be construed as to obligate the Assistant Secretary for Planning and Evaluation to make any awards whatsoever. Awards and the distribution of awards among the priority areas are contingent on the needs of the Department at any point in time and the quality of the applications that are received.

D. Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424);

2. Budget Information—Non-construction Programs (Standard Form 424A);

3. Assurances—Non-construction Programs (Standard From 424B);

4. Table of Contents;

5. Budget Justification for Section B Budget Categories;

6. Proof of Non-profit Status, if appropriate;

7. Copy of the applicant's Approved Indirect Cost Rate Agreement, if necessary;

8. Project Narrative Statement, organized in six sections, addressing the following topics (b through e are limited to twenty (20) single-spaced pages for Track 1 and ten (10) pages single-spaced pages for Track 2):

(a) Abstract (must include assurance of willingness to participate in a process evaluation),

(b) Goals, Objectives and Usefulness of the Project,

(c) Methodology and Design,

(d) Background of the Personnel and Organizational Capabilities,

(e) Work plan (timetable), and

(f) Budget narrative.

9. Any appendices or attachments;

10. Certification Regarding Drug-Free Workplace;

11. Certification Regarding Debarment, Suspension, or other Responsibility Matters;

12. Certification and, if necessary, Disclosure Regarding Lobbying;

13. Supplement to Section II—Key Personnel;

14. Application for Federal Assistance Checklist.

Standard forms are available from Brenda Benesch or may be obtained electronically from the ASPE World Wide Web site: *http://aspe.hhs.gov/funding.htm*

Part V. Questions and Answers

1. Should We Apply Under Track 1 or Track 2?

There are two ''tracks'' under this announcement. Track 1 applicants are expected to be those state agencies that are ready to implement proposed innovations or expand existing innovative strategies. Track 1 applicants likely will have innovative strategies developed and most or all aspects of the programs or services will have been piloted, if not fully implemented. Track 2 applicants are expected to be those state agencies that have innovative ideas, but need time for further planning to fully develop or finalize operational plans.

ASPE expects that approved applications under Track 1 will be for a period of 1 year (with the possibility of an additional 2 years of funding at a lower level) and applications under Track 2 will be for a period of 17 months.

2. Which Agency May Submit the Application Under This Announcement?

Any state agency may apply. However, refer to Section I, part C, regarding the purpose of the program.

ASPE expects that the project will be conducted in a defined geographic area (*e.g.,* county, city, selected districts, or the state).

As indicated in the announcement, the state can propose more than one project and can apply under either Track 1 or 2, or under both tracks (for different projects).

3. How Much Money is Available Per Applicant Under This Announcement?

Track 1: ASPE anticipates that awards under Track 1 may be up to $500,000 per year.

Track 2: ASPE anticipates that awards under Track 2 may be up to $50,000 for the 17-month period.

4. How Many Awards Will Be Made or How Many Applications Will Be Approved?

Track 1: ASPE anticipates awarding 4–6 grants under Track 1.

Track 2: ASPE anticipates awarding up to 20 grants under Track 2, under this announcement.

5. May a State Submit More Than One Application (e.g., Under Either Track 1 or 2 or Submit Applications Under Each Track)?

Yes. If the state agency wishes to propose and apply to have more than one project awarded under either Track 1 or 2, they should submit an application for each proposed project. Sufficient budget detail must be provided to allow ASPE to determine the costs associated with *each* project proposed.

If the state agency wishes to submit applications under both Track 1 and Track 2 for different projects, separate applications for each track must be submitted. (Note: there are different submission deadlines for each track).

6. Can More Than One Agency From a State Apply?

Yes.

7. Are There Page Limits or Other Page Guidelines for the Narrative Section of the Application?

Yes, there are page limits for the applications. Applicants are requested to be concise. The announcement

indicates that applications are not expected to be lengthy (*see* Part III, Section C). Track 1 applications must be no longer than 20 pages, and Track 2 applications must be no longer than 10 pages, excluding required forms, certificates, etc. Applications must be typed in 12 point font size, with single line spacing, and 1 inch top, bottom, right, and left margins. Applications that exceed the page limits and other guidelines will not be considered.

8. Where Should Applications Be Sent?

An original and two copies of the complete application should be sent: to Michael J. Loewe, Deputy Grants Management Officer, Grants Management Branch, National Institute of Child Health and Human Development, U.S. Department of Health and Human Services, 6100 Executive Boulevard, Room 8A01, Bethesda, Maryland 20892–7510 (Regular Mail), Rockville, Maryland 20852 (Express Mail) , Phone: (301) 435–6995.

9. What Is the Application Submission Deadline?

For Track 1: applications must be received or postmarked by July 23, 2002.

For Track 2: applications must be received or postmarked by July 23, 2002.

10. What Is the Deadline for Applications Sent Via Overnight Courier Services?

Applications that are hand-carried will be considered as meeting the deadline if they are *received on or before the deadline date between the hours of 8 a.m. and 4:30 p.m. EST* at Grants Management Branch, National Institute of Child Health and Human Development, U.S. Department of Health and Human Services, 6100 Executive Boulevard, Room 8A01, Bethesda, Maryland 20892–7510 (Regular Mail), Rockville, Maryland 20852 (Express Mail), Phone: (301) 435–6995, Fax: (301) 402–0915. The address must include the designation: ''Attention: Michael Loewe''. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

11. May Applications Be Faxed or Sent Electronically?

Applications transmitted by fax or through other electronic means will not be accepted regardless of date or time of submission or receipt.

12. Where Can Additional Copies of the Announcement and/or Forms Be Obtained?

The complete package, announcement and standard forms, are available on the ASPE Web site at: *http://aspe.hhs.gov/funding.htm* or by calling Michael Loewe at (301) 435–6995.

Part VI: Appendix

Examples of Activities for State Innovation Grants

The following are intended as examples that States may pursue through innovation grants. Although we have grouped the examples into subcategories, several of them describe cross-cutting issues. States are encouraged to submit ideas of their choosing, and are not required to use one of the ideas suggested below.

Access to Health Care and/or Human Services and Benefits

- Many states are interested in expanding access to private health insurance for low-income workers. Funds from state innovation grants could be used for the design or infrastructure development of programs such as the following:
- *Premium assistance programs for low-income workers who cannot afford to purchase insurance offered by their employers*—states could subsidize premiums or other cost-sharing requirements for workers deemed eligible;
- *A private insurance product for small employers who do not now offer insurance coverage to their employees*—states could target certain employers for this type of insurance, including daycare and long-term care providers and other service-oriented businesses.
- States could adopt a number of strategies to address lack of access to dental care and affordable dental insurance, which is particularly a problem among the poor, racial and ethnic minorities, and people living in rural areas. For example, states could form public/private partnerships to increase the number of providers or the availability of dental insurance.
- Coordination between adequate income, food, social services, and health care is especially important in rural communities and areas with high concentration of poverty where services and providers are limited. Although health and social welfare are strongly associated with one another, Federal, State, and local planning efforts continue to address primary health care, behavioral health care, and social services separately. States could use innovation grants to improve coordination and compatibility of services, processing requirements, eligibility, and financial accountability.
- Many states are interested in providing coverage for personal care and other community-based services to be provided to Medicaid beneficiaries in assisted living facilities (ALFs). However, in order to serve Medicaid beneficiaries in ALFs, financing sources must be found to pay the room and board components of the cost of care since Medicaid law prohibits such coverage. The Department of Housing and Urban Development has a grants program specifically for conversion of Section 202 housing to assisted living, and HUD is interested in working with State Medicaid agencies. States may choose to apply for a State Innovation Grant to do some preliminary interagency planning to come up with new approaches that will enable them to access HUD funds for 202 conversions to ALFs.

State Data Enhancements

- States could enhance their data management systems to integrate or link administrative data across a range of programs that serve similarly situated families; expand eligibility screening processes; application of Geographic Information System (GIS) techniques for program planning and operations; or expand use of new technologies, such as Personal Digital Assistants.
- States and providers often face burdensome, duplicative, inconsistent data collection and reporting requirements in their health and long-term care systems. States may elect to use a State Innovation Grant to work on the development of an electronic health information system that will support effective clinical management of patients; improve quality of care; enhance, expand, and support the role of patients in health care decision making; and reduce regulatory burden imposed on providers.

Comprehensive Support Services for Children and Families

- Many states are developing a comprehensive set of early childhood services and family support programs to promote school-readiness in all young children. To support high-risk families, working families, and children with special needs, states could integrate federal support systems that address different facets of early childhood (*i.e.,* Medicaid, SCHIP, mental health, child care, Head Start and Early Head Start, *etc.*); or link key services that address the various components of early childhood development (for example, promoting reading readiness and healthy development in child care settings).
- States are beginning to realize that there is tremendous overlap between adults in the criminal justice system and the adults and children served in many of the health and human services programs targeting low-income families. States could build connections between support programs for families of prisoners, prisoner/re-entry programs, and health and social service delivery systems.
- There is growing recognition of the critical importance of primary and secondary prevention of youth risk behavior through approaches and supports targeting all youth, and particularly high-risk youth. States can make a significant effort to provide program interventions to compensate for those that may be missing within the current system by: involving multiple youth serving sectors to develop core indicators and encouraging state data agencies to monitor these indicators; providing cross-training to facilitate interagency education and

communication; or developing a state youth coordinating council.

• State or local agencies might partner with employers to support low-income working families by matching the employer's provision of paid release time to take job-related classes. Agencies could also partner with employers to offer lunchtime classes on such topics as choosing a child care provider, conflict resolution, or repairing bad credit.

Long-Term Care Services and Resources

• States interested in experimenting with ''consumer-directed'' approaches to home and community-based long-term care services could undertake a variety of innovative practices, for example: developing the specialized infrastructure needed for consumers to recruit and manage home care workers directly, without having to take on the business-related tasks of issuing paychecks and making required tax filings; providing consumer-directed service options within managed care structures; providing options for particular constituencies, such as elders with Alzheimer's disease and their families; or growing small pilot programs to scale and adapting those originally funded with state revenues to conform to Medicaid requirements.

• States could develop campaigns to make residents aware of their risk for long-term care and their options for planning ahead, including purchasing private long-term care insurance. States could use their existing aging infrastructure to ensure that persons nearing retirement age are offered the resources and assistance necessary for successful planning, or they could use the grant resources to investigate the best and most cost-effective mechanisms for educating citizens so that future resources will be well targeted.

• Allegations of poor quality, abuse, and neglect in nursing homes are giving rise to an increasing number of private lawsuits and, as a result, liability insurance premiums for facilities in a number of states have gone sky high. States may choose to apply for state innovation grants to develop working partnerships with private liability insurers to identify ''best practices'' for nursing homes that, if adopted by facilities, can be linked to liability premium discounts.

• States, providers, consumers and others are increasingly struggling with a serious crisis in recruiting and retaining a quality, committed workforce to provide long-term care services in institutional and home and community-based settings. States may opt to use state innovation funds to develop and implement programs to address the shortage. For example, states could experiment with providing new training programs, establishing alternative approaches to management and supervision, improving benefits for direct care workers, or creating career ladders.

Dated: May 15, 2002.

William F. Raub,

Principal Deputy Secretary for Planning and Evaluation.

[FR Doc. 02–13034 Filed 5–23–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Public comments on EPC Report ''Systems to Rate the Strength of Scientific Evidence''

AGENCY: The Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for public comments.

SUMMARY: To inform its response to a legislative mandate to develop and disseminate methods or systems to rate scientific evidence found in health care research studies (*see Background* section, below), AHRQ commissioned the Research Triangle Institute-University of North Carolina Evidence-based Practice Center (RTI/UNC EPC) to undertake a study on systems to rate the quality of scientific evidence. The goals of the EPC study were to describe systems to rate the strength of scientific evidence, including evaluating the quality of individual articles that make up a body of evidence on a specific scientific question in health care, and to provide some guidance as to current ''best practices'' with respect to rating scientific evidence regrading a particular clinical treatment or technology.

The RTI/UNC EPC completed their study and submitted to AHRQ the report ''Systems to Rate the Strength of Scientific Evidence''. The report includes the EPC's methodological approach (*e.g.*, search strategy, data collection, analysis of findings) and discusses identification of systems, factors important in developing and using rating systems, and a ''best practices'' orientation to selecting systems for use. The report also includes recommendations for future research.

The comprehensive report ''Systems to Rate the strength of Scientific Evidence, is available on AHRQ's web page at *http://www.ahrq.gov/clinic/evrptfiles.htm#strength*''. The report also is available, without charge, from the AHRQ Clearinghouse by calling 800–358–9295.

There are a variety of audiences for the guidance that the Agency will disseminate on this subject, who we hope will be interested in evaluating the usefulness of this EPC report for their purposes and who will also describe the type of guidance that would be most helpful to them. Obtaining comment on how the AHRQ can best fulfill its legislative mandate to identify and disseminate guidance on systems to rate the strength of scientific evidence, is essential to fulfill its commitment to inform all segments of the health care community. We are interested in receiving comments on the report's overall clarity, usefulness, and thoroughness, and we also welcome suggestions on the type of guidance that would be most helpful to researchers, policymakers, provider systems, professional societies, practitioners, patients, and others. For example, what do professional societies, practitioners, payors, policymakers need to know about grading scientific evidence? What parts of the EPC report will be used in day-to-day health care decision making? Is some part this information useful to patients? What are the most useful format(s) for the guidance that AHRQ should use for its dissemination strategy with particular audiences or users?

DATES: For particular audiences or uses, or explanation of particular rating systems to be considered for incorporation and discussion in the guidance AHRQ will provide in the near future in accordance with its legislative mandate, written comments must be received by August 22, 2002. Comments should be sent to Jacqueline Besteman (e-mail attached file preferred), at *jbestema@ahrq.gov*; or faxed to 301–594–4027.

FOR FURTHER INFORMATION CONTACT: Jacqueline Besteman, J.D., M.A., Director, EPC Program, Center for Practice and Technology Assessment AHRQ, 6010 executive Blvd., Suite 300, Rockville, MD 20852; Phone: (301) 594–4017; Fax: (301) 594–4027; e-mail: *jbestema@ahrq.gov*.

SUPPLEMENTARY INFORMATION:

Background

AHRQ is the lead Federal agency for enhancing the quality, appropriateness, and effectiveness of healthcare services and access to such services. In carrying out this mission, AHRQ conducts and funds research that develops and presents evidence-based information on healthcare outcomes, quality, cost, use and access. Included in AHRQ's legislative mandate is support of syntheses of scientific clinical and behavioral studies on particular treatments and technologies, and wide-spread dissemination of the resultant evidence reports and technology assessments. The mandate includes dissemination of guidance on methods or systems for rating the strength of scientific evidence. These research findings, syntheses, and guidance are intended to assist providers, clinicians, payers, patients, and policymakers in making evidence-based decisions

regarding the quality and effectiveness of health care.

Section 911(a), part B, Title IX, Healthcare Research and Quality Act of 1999, requires in part that AHRQ, in collaboration with experts from the public and private sectors, identify methods or systems to assess health care research results, particularly ''methods or systems to rate the strength of the scientific evidence underlying health care practice, recommendations in the research literature, and technology assessments.'' The Agency is to make methods or systems for rating evidence, widely available. To inform its response to this mandate, AHRQ invites public comments on the RTI/UNC EPC study noted above.

Dated: May 17, 2002.

Carolyn M. Clancy,

Acting Director.

[FR Doc. 02–13152 Filed 5–23–02; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–56]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of Customer Satisfaction of the Centers for Disease Control and Prevention (CDC) and Agency for Toxic Substances and Disease Registry (ATSDR) Internet Home Page and Links (OMB. No. 0920–0449)—Extension—CDC and ATSDR proposes to continue to conduct consumer satisfaction research around its Internet site in order to determine whether the information, services, and materials on this web site are presented in an appropriate technological format and whether it meets the needs, wants, and preferences of visitors or ''customers'' to the Internet site. The re-authorized survey will be conducted over the next three years and survey results will be analyzed and interpreted semiannually. Customers on the web site will only be asked to respond once.

Information on the site focuses on disease prevention, health promotion, and epidemiology. The site is designed to serve the general public, persons at risk for disease, injury, and illness, and health professionals. This research will ensure that these audiences have the opportunity to provide ''customer feedback'' regarding the value and effectiveness of the information, services, and products of the CDC and ATSDR Web site and whether these materials are easy to access, clear and informative. There are no costs to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Visitors to CDC Internet Site	13,000	1	10/60	2,166
Total				2,166

Dated: May 17, 2002.

John Moore,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–13040 Filed 5–23–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect, Centers for Disease Control and Prevention of the Department of Health and Human Services, has been renewed for a 2-year period extending through May 17 2004.

For further information, contact Dixie E. Snider, Jr., M.D., Acting Executive Secretary, National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect, 1600 Clifton Road, NE, m/s D–50, Atlanta, Georgia 30333. Telephone 404/639–7240, or fax 404/639–7341.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 17, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–13071 Filed 5–23–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02136]

Reducing Sexual Risk for HIV Transmission in Substance-Using Men Who Have Sex With Men; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program to support research on interventions to reduce sexual risk for HIV transmission in substance-using men who have sex with men (MSM). This program addresses the ''Healthy People 2010'' focus HIV.

The purpose of the research is to develop and test behavioral interventions that focus on reducing risk for HIV transmission by altering the sexual risk behavior of substance using and abusing MSM. Under this program, the primary outcome of the project will be the development of effective interventions for substance-using MSM which may then be adapted and replicated by community-based HIV prevention and substance abuse agencies among sub-populations of substance-using MSM throughout the U.S. This announcement addresses goals of CDC's HIV Prevention Strategic Plan.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for HIV, STD & TB Prevention. Through the implementation of HIV prevention programs, reduce the number of cases of HIV infection and AIDS: 1. acquired heterosexually, 2. related to injecting drug use, 3. associated with male-to-male homosexual contact, and 4. acquired perinatally.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, faith-based organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: *Title 2 of United States Code Section 1611* states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $1,200,000 is expected to be available in FY 2002 to fund up to four awards for the first year of project activities. It is expected that the average award will be approximately $300,000 in the first year to support development of an intervention in additional years and will begin on or before September 30, 2002. The award will be made for a 12-month budget period, within a project period of up to five years. Funding estimates are expected to increase once recruitment and intervention activities begin. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports, satisfactory participant accrual, and the availability of funds. The Catalog of Federal Domestic Assistance number is 93.943.

Funding Preference

Funding decisions will attempt to achieve regional diversity of the four sites (e.g., Northeast, South, Central, West). Funding decisions will also take into consideration geographical locations that afford sufficient numbers of men from which to sample.

D. Program Requirements

In conducting activities to achieve the purpose of these programs, the recipient will be responsible for the activities listed under Recipient Activities, and CDC will be responsible for conducting activities listed under CDC Activities:

1. Recipient Activities

The program will support four sites to work collaboratively with each other and with Federal investigators in conducting an intervention study to reduce sexual risk-taking among substance abusing MSM. At each site, it is expected that grantees will newly enroll a minimum of 375 men, including non-injection drug and other substance-using (including alcohol) gay identified and non-gay identified MSM.

The interventions to be tested should be theory-based, group-level interventions appropriate for use among a culturally-diverse population of MSM who reside within a challenging socio-cultural context. Intervention strategies should be sufficiently brief and of a technical level that would facilitate rapid dissemination among community-based organizations. Approximately one-third of the men should identify as African American, one-third as Hispanic/Latino and one-third as Caucasian at each study site. Men who are recruited into the study must currently use drugs and/or alcohol at a heavy level and have been sexually active within the past three months. Men recruited into the study can be poly-drug users (including alcohol), but without current intravenous drug use. Men can be recruited from a variety of venues, including drug using venues, bars, public sex environments known also to be sites for drug/alcohol use as well as substance abuse treatment organizations. The design of the study should include an attention control strategy, so that men randomized to the control condition are invited to equivalent time spent in groups that focus on an issue of interest to this population.

Applicants should develop (1) sampling and recruitment strategies that ensure that the study includes a demographically diverse group of MSM, (2) culturally-sensitive measures of antecedent and outcome variables, including both quantitative and qualitative assessments, (3) an intervention plan that relates directly to an identified theoretical model of sexual risk reduction, (4) a core set of measures that will facilitate assessment of substance use and sexual risk behavior, (5) a sampling plan that will successfully recruit and retain a large number of research participants whose substance use is associated with high risk sexual behavior at some level, and (6) stringent safeguards for protecting confidentiality of participants.

Applicants must develop protocols and assessment instruments that will increase understanding of a broad array of sociocultural, structural, psychological, and behavioral factors as they relate to HIV infection risk in substance-using MSM. These factors must be addressed in the design of intervention activities, so that the forces that are promoting high risk sexual activity within these populations are addressed in the intervention. Clear hypotheses should be developed to test how these variables—and drug and alcohol use themselves—mediate or moderate target risk behaviors. After sites are funded, but before research activities begin, grantees and Federal investigators will work collaboratively to refine the protocols so that they fit together across sites and address

behavioral intervention research issues in a scientifically rigorous manner.

Collaborate with other Federally sponsored researchers, including developing and using common data collection instruments and data management procedures, as determined in post-award grantee planning conferences.

Recipients will be required to pool data for analysis and publication, but can also conduct independent site-specific analyses, as agreed to by the multi-site study group. Recipients are also required to work collaboratively as a study group to:

a. Attend meeting(s) at CDC to develop collaborative research protocol.

b. Develop the research study protocols and standardized data collection forms across sites, including standardized measures of drug and alcohol use and high risk sexual behaviors.

c. Prepare an IRB protocol for approval at the local and CDC levels.

d. Identify, recruit, obtain informed consent from, and newly enroll an adequate number of study participants as determined by the study protocols and the program requirements.

e. Follow study participants as determined by the study protocols.

f. Develop the intervention and intervention procedures in collaboration with the other funded investigators and implement the intervention as defined in study protocols.

g. Establish procedures to maintain the rights and confidentiality of all study participants.

h. Perform laboratory tests (when appropriate) and data analysis as determined in the study protocols.

i. Collaborate and share data (when appropriate) with other collaborators to answer specific research questions.

j. Conduct data analysis with all collaborators.

k. Present and publish research findings.

l. Participate in conference calls with all collaborators.

m. Attend scheduled meetings with other funded grantees.

2. CDC Activities

a. Provide technical assistance as needed in intervention development and in the design and conduct of research.

b. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

c. Assist as needed in designing a data management system.

d. Assist as needed in performance of selected laboratory tests.

e. Work collaboratively with investigators to help facilitate research activities across sites involved in the same research project.

f. Analyze data and present findings at meetings and in publications.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop your application. Your application will be scored based on the criteria listed in the Evaluation Criteria, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 double-spaced pages, printed on one side with one inch margins in a 12-point font or greater. Follow the directions for completing the application that are found in the Public Health Service (PHS) 398 kit.

F. Submission and Deadline

Submit the original and two copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

On or before July 31, 2002 submit the application to:

Technical Information Management Section, PA #02136, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are:

Received on or before the deadline date.

Late Applications: Applications which do not meet the criteria above will be returned to the applicant.

G. Evaluation Criteria

Application

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals) as stated in section ''A. Purpose'' of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Applications will be ranked on a scale of 100 maximum points. Applications will be reviewed and evaluated based on the evidence submitted and the applicant's abilities to meet the following criteria:

1. Familiarity With and Access to the Study Population (25 points)

a. Extent of the applicant's knowledge of issues faced by study population, including substance use and sexual risk behaviors, access to the study population and experience in working with the population.

b. Existence of linkages to facilitate recruitment from and referral to community-based programs providing services for the study population, including letters of support given in an appendix.

c. Feasibility of plans to involve the study population, their advocates, or service providers in the development of research activities and to inform them of research results.

d. Feasibility of plans for recruitment and outreach to new study participants (e.g. not men currently enrolled in an ongoing study).

2. Description and Justification of an Intervention and Research Plan (40 points)

a. Quality of the review of the scientific literature pertinent to the proposed study, including the theoretical basis for the investigation and relevance of research questions.

b. The originality of the research, including the extent to which it addresses important gaps in knowledge and has strong relevance for guiding behavioral interventions.

c. Applicant's understanding of the research objectives as evidenced by the quality of the proposed research plan, specific study design and the choice of the theory to guide the intervention activities as well as the quality of the plan to operationalize intervention activities.

d. Feasibility of plan to sample, recruit, obtain informed consent and newly enroll 375 study participants in a culturally and linguistically appropriate manner. This includes plans for achieving a demographically diverse sample within the African-American and Hispanic populations, conducting multi-venue sampling.

e. Feasibility of plan for collecting both quantitative and qualitative formative research data and to follow research participants over time.

f. Comprehensiveness of the plan to protect the rights and confidentiality of all participants.

g. Thoroughness of statistical analysis plans, including data cleaning, management, and substantive analyses, and plans for timely provision of data for pooled analyses.

h. Extent to which study proposal demonstrates agreement to comply with multi-site research requirements (e.g., common protocol, data collection, and computer and data management systems).

i. The degree to which the applicant has met the HHS Policy requirements regarding the inclusion of ethnic and racial groups in the proposed research. This includes: (1) the proposed plan for the inclusion of racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted;

j. Provide a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

k. Provide general time line for conducting the research and a detailed time line for the first year of the study, including measurable process objectives for the first year of the study.

3. Demonstration of Staff's Capability to Conduct Research (20 points)

a. Applicant's ability to carry out the proposed research as demonstrated by the training, experience, and expertise of the principal investigator and the proposed research team and organizational setting, including demonstration of ability to collect, manage, and analyze accurate data in a timely manner.

b. Evidence of plan for establishing a partnership with at least one community based organization to link participants with prevention and medical services as needed, and to consult on study procedures as needed.

c. Demonstration of epidemiologic, behavioral intervention, clinical, administrative, and management expertise needed to conduct the proposed research.

d. Demonstration that principal investigator and staff have experience working with the targeted population of study participants.

e. Demonstration that investigative team includes a staff member with expertise in qualitative formative data analysis.

4. Staffing, Facilities, and Time-Line (15 points)

a. Availability of qualified personnel with realistic and sufficient percentage-time commitments (including an estimated staffing plan for years in which intervention activities will occur); clarity of the described duties and responsibilities of project personnel including clear lines of authority and supervisory capacity over the behavioral, epidemiologic, clinical, administrative, data management, and statistical aspects of the research.

b. Adequacy of the facilities, equipment, data processing and analysis capacity, and systems for management of data security and participant confidentiality.

c. Adequacy of base staff to keep pace with anticipated workload.

d. Adequacy of time-line for conducting the research.

5. Other (not scored)

a. Budget: The extent to which it is reasonable, clearly justified, consistent with the intended use of funds, and allowable. All budget categories should be itemized.

b. Human Subjects: The application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. annual progress reports;

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in section J (''Where to Obtain Additional Information'') of this document.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–6 Patient Care
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317 (k)(2)of the Public Health Service Act, [42 U.S.C. section 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.943.

J. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click ''Funding'' then ''Grants and Cooperative Agreements.''

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Lynn Mercer, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Announcement #02136, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Rd. Room 3000, Mailstop E–15, Atlanta, GA 30341, Telephone: (770) 488–2810, E-mail address: *lzm2@cdc.gov*.

For program technical assistance, contact: Craig Studer, Deputy Chief, Behavioral Intervention Research Branch, Division of HIV/AIDS Prevention—IRS, National Center for HIV, STD, TB Prevention ,Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–37, Atlanta, Georgia 30333, Telephone: (404) 639–1900, E-mail address: *CStuder@cdc.gov*.

Dated: May 20, 2002.

Edward J. Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–13075 Filed 5–23–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee Meeting: Cancelled.

NAME: Mine Safety and Health Research Advisory Committee (MSHRAC) Meeting—Cancelled.

TIME AND DATE: 11 a.m.–2 p.m., May 22, 2002.

PLACE: Teleconference call will originate at the Centers for Disease Control and Prevention, National Institutes for Occupational Safety and Health, Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the teleconference.

STATUS: Meeting cancelled. Published in the **Federal Register:** April 17, 2002, Volume 67, Number 74, page 18911.

FOR FURTHER INFORMATION CONTACT: Dr. Lewis Wade, Executive Secretary, MSHRAC, NIOSH, CDC, HHHB HHH 715H, P12, Washington, DC 20201–0004, telephone 202/401–2192.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 20, 2002.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–13073 Filed 5–23–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8:30 a.m.–5:30 p.m., June 27, 2002. 8 a.m.—5 p.m., June 28, 2002.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC, telephone 202/797–2000.

Status: Open 8:30 a.m.—9:30 a.m., June 27, 2002. Closed 9:30 a.m.—5:30 p.m., June 27, 2002. Closed 8 a.m.—5 p.m., June 28, 2002.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas. It is the intent of the NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters to be Discussed: The meeting will convene in open session from 8:30–9:30 a.m. on June 27, 2002, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the SOHSS to consider safety and occupational health-related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6) title 5 U.S.C., and the Determination of the Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Charles N. Rafferty, Ph.D., NIOSH Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, Maryland 20892, telephone 301/435–3562, fax 301/480–2644.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 17, 2002.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–13072 Filed 5–23–02; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2141–PN]

RIN 0938–ZA35

Medicare and Medicaid Programs; Application by the American Osteopathic Association (AOA) for Approval of Deeming Authority for Ambulatory Surgical Centers (ASCs)

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice announces the receipt of an application from the American Osteopathic Association (AOA), for recognition as a national accreditation program for ambulatory surgical centers that wish to participate in the Medicare or Medicaid programs. The Social Security Act requires that the Secretary publish a notice identifying the national accreditation body making the request, describing the nature of the request, and providing at least a 30-day public comment period.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on June 24, 2002.

ADDRESSES: In commenting, please refer to file code CMS–2141–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2141–N, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Laura A. Weber, (410) 786–0227.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7197.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration

date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access,* a service of the U.S. Government Printing Office. The website address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in an ambulatory surgical center (ASC) provided that the ASC meets certain requirements. Section 1832(a)(2)(F)(i) of the Social Security Act (the Act) includes requirements that an ASC have an agreement in effect with the Secretary and that it meet health, safety, and other standards specified by the Secretary in regulations. Requirements concerning supplier agreements are located in 42 CFR part 489 and those pertaining to the survey and certification of facilities are set forth in 42 CFR part 488.

In 42 CFR part 416, we specify the conditions that an ASC must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for facility services.

For an ASC to enter into an agreement, a State survey agency must first certify that the ASC complies with our conditions or requirements. Following that certification, the ASC is subject to routine monitoring by a State survey agency to ensure continuing compliance. As an alternative to surveys by State agencies, section 1865(b)(1) of the Act provides that, if the Secretary finds that, through accreditation by a national accreditation body, a provider entity demonstrates that all of our applicable conditions and requirements are met or exceeded, the Secretary will deem that the provider entity has met the applicable Medicare requirements.

Section 1865(b)(2) of the Act further requires that the Secretary's findings consider the applying accreditation organization's—

- Requirements for accreditation;
- Survey procedures;
- Ability to provide adequate resources for conducting required surveys;
- Ability to supply information for use in enforcement activities;
- Monitoring procedures for provider entities found out of compliance with the conditions or requirements; and
- Ability to provide the Secretary with necessary data for validation.

Section 1865(b)(3)(A) of the Act requires that the Secretary publish a notice within 60 days of receipt of a completed application; the notice must—

- Identify the national accreditation body making the request;
- Describe the nature of the request; and
- Provide at least a 30-day public comment period.

In addition, we must publish a finding of approval or denial of the application within 210 days from the receipt of the completed request.

The American Osteopathic Association (AOA) previously applied to us for deeming authority which we announced in the **Federal Register** on March 14, 2001 (66 FR 14906). However, the organization withdrew its application before a final decision was made. We received a revised complete application from AOA on April 18, 2002.

II. Determining Compliance—Surveys and Deeming

A national accrediting organization may request the Secretary to recognize its program. The Secretary then examines the national accreditation organization's requirements to determine if they meet or exceed Medicare standards. If the Secretary recognizes an accreditation organization in this manner, any provider accredited by the national accrediting body's program that we have approved for that service will be ''deemed'' to meet the Medicare conditions of coverage. To date, three such organizations have been recognized to have deeming authority for their ambulatory surgical programs: The Joint Commission on Accreditation of Health Organizations, the Accreditation Association for Ambulatory Health Care, and the American Association for Accreditation of Ambulatory Surgery Facilities, Inc.

The purpose of this notice is to notify the public of the request of the AOA for approval of its request that the Secretary find that its accreditation program for ASCs meets or exceeds Medicare conditions and requirements. This notice also solicits public comments on the ability of this organization to develop and apply standards that meet or exceed the Medicare conditions for coverage to ASCs. Our regulations concerning approval of accrediting organizations are set forth in 42 CFR § 488.4, 488.6, and 488.8.

III. Ambulatory Surgical Center Conditions for Coverage and Requirements

The regulations specifying the Medicare conditions for coverage for ASCs are located in 42 CFR part 416. These conditions implement section 1832(a)(2)(F)(i) of the Act, which provides for Medicare Part B coverage of facility services furnished in connection with surgical procedures specified by the Secretary under section 1833(i)(1)(a) of the Act.

Under section 1865(b)(2) of the Act and our regulations in 42 CFR 488.8 (Federal review of accreditation organizations) our review and evaluation of a national accreditation organization will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of an accreditation organization's requirements for an entity to our comparable requirements for that entity.
- The organization's survey process to determine the following:

+ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

+ The comparability of its processes to that of State agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

+ The organization's procedures for monitoring providers or suppliers found by the organization to be out of compliance with program requirements. These monitoring procedures are used only when the organization identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified in 42 CFR 488.7(d).

+ The ability of the organization to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

+ The ability of the organization to provide us with electronic data in ASCII comparable code, and reports necessary for effective validation and assessment of the organization's survey process.

+ The adequacy of staff and other resources, and its financial viability.

+ The organization's ability to provide adequate funding for performing required surveys.

+ The organization's policies with respect to whether surveys are announced or unannounced.

- The accreditation organization's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Notice Upon Completion of Evaluation

Upon completion of our evaluation, including our review of comments received as a result of this notice, we will publish a notice in the **Federal Register** announcing the results of our evaluation.

V. Response to Public Comments

Because of the large number of comments we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble and will respond to them in a forthcoming rulemaking document.

VI. Regulatory Impact Statement

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity).

The RFA requires agencies to analyze options for regulatory relief for small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million to $25 million or less in any 1 year (for details, see the Small Business Administration's publication that set forth size standards for health care industries at 65 FR 69432). For purposes of the RFA, States and individuals are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any notice that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This notice merely recognizes AOA as a national accreditation organization that has requested approval for deeming authority for ambulatory surgical centers that are participating in the Medicare program. Since these provider entities must be routinely monitored to determine compliance with Medicare requirements, we believe that this organization's accreditation program has the potential to reduce both the regulatory and administrative burdens associated with the Medicare program requirements.

This notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

Therefore, we have determined, and the Secretary certifies, that this proposed notice would not result in a significant impact on small entities and would not have an effect on the operations of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice would have no consequential effect on State, local, or tribal governments. We believe the private sector costs of this notice would fall below this threshold as well.

In accordance with Executive Order 13132, this notice would not significantly affect the rights of States and would not significantly affect State authority. This notice describes only processes that must be undertaken to fulfill our obligation to enforce our regulations as required by the April 8, 1997 (62 FR 16985) regulation.

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 1865(b)(3)(A) of the Social Security Act (42 U.S.C. 1395bb(b)(3)(A)).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 17, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 02–12929 Filed 5–23–02; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0159]

Agency Information Collection Activities; Proposed Collection; Comment Request; Focus Groups as Used by the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on focus groups as used by FDA. These focus groups gauge public opinion, and policymakers can use focus group findings to test and refine their ideas so they can conduct further research whose findings can be used to adopt new policies and to allocate or redirect significant resources to support these policies.

DATES: Submit written or electronic comments on the collection of information by July 23, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests

or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Focus Groups as Used by the Food and Drug Administration

FDA will collect and use information gathered through the focus group vehicle. This information will be used to develop programmatic proposals, and as such complements other important research findings to develop these proposals. Focus groups do provide an important role in gathering information because they allow for a more indepth understanding of consumers' attitudes, beliefs, motivations, and feelings than do quantitative studies.

Also, information from these focus groups will be used to develop policy and redirect resources, when necessary, to our constituents. If this information is not collected, a vital link in information gathering by FDA to develop policy and programmatic proposals will be missed causing further delays in policy and program development.

FDA estimates the burden for completing the forms for this collection of information as follows:

The total annual estimated burden imposed by this collection of information is 2,884 hours annually.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Center	Subject	No. of Focus Groups per Study	No. of Focus Groups Sessions Conducted Annually	No. of Participants per Group	Hours of Duration for Each Group (includes screening)	Total Hours
Center for Biologics Evaluation and Research	May use focus groups when appropriate	1	5	9	1.58	71
Center for Drug Evaluation and Research	Varies (e.g., direct-to-consumer Rx drug promotion, physician labeling of Rx drugs, medication guides, over-the-counter drug labeling, risk communication)	10	100	9	1.58	1,422
Center for Devices and Radiological Health	Varies (e.g., FDA Seal of Approval, patient labeling, tampons, online sales of medical products, latex gloves)	5	25	9	2.08	468
Center for Food Safety and Applied Nutrition	Varies (e.g., food safety, nutrition, dietary supplements, and consumer education)	8	32	9	1.58	455
Center for Veterinary Medicine	Varies (e.g., food safety, labeling, cosmetic safety and labeling)	5	25	9	2.08	468
Total		29	187		1.71	2,884

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Annually, FDA projects about 29 focus group studies using 187 focus groups lasting an average of 1.71 hours each. FDA has allowed burden for unplanned focus groups to be completed so as not to restrict the agency's ability to gather information on public sentiment for its proposals in its regulatory as well as other programs.

Dated: May 14, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–13163 Filed 5–23–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Subcommittee of the Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 11, 2002, from 8 a.m. to 6 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Thomas H. Perez, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: perezt@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: Beginning at 8 a.m., the subcommittee will discuss and receive comments on the ''written request template'' for the proton pump inhibitors in the treatment of gastroesophageal reflux disease in pediatric patients. Starting at 1 p.m., the subcommittee will discuss a ''preliminary priority list'' of drugs for which: (1) Additional studies are needed to assess the safety and effectiveness of the use of the drug in the pediatric population and (2) the drug has no remaining marketing exclusivity or patent protection. This list is mandated by the Best Pharmaceuticals for Children Act and the National Institutes of Health is the designated lead. At 4:30 p.m., representatives from Europe will provide information to the subcommittee on the ongoing pediatric initiatives in the European Union. Following this at 5 p.m., the agency will provide an update to the subcommittee on the pediatric labeling that has resulted from the exclusivity initiative under the FDA Modernization Act and the annual update on the pediatric rule, completed studies, deferrals, and waivers. The background material for this meeting will be posted on the Internet when available or one working day before the meeting on the Internet at www.fda.gov/ohrms/dockets/ac/menu.htm.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by June 3, 2002. Oral presentations from the public will be scheduled between approximately 9:15 a.m. and 9:45 a.m. and 2 p.m. and 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 3, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please notify Thomas H. Perez at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 20, 2002.

Linda A. Suydam,

Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–13106 Filed 5–23–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Process Analytical Technologies Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Process Analytical Technologies Subcommittee of the Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 12, 2002, from 8:30 a.m. to 5:30 p.m., and June 13, 2002, from 8 a.m. to 5 p.m.

Location: Hilton DC North—Gaithersburg, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Kathleen Reedy and Jayne Peterson, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail: reedyk@cder.fda.gov, petersonj@cder.fda.gov or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On June 12, 2002, the subcommittee will: (1) Identify and define technology and regulatory uncertainties/hurdles, possible solutions, and strategies for the successful implementation of process analytical technologies (PATs) in pharmaceutical development and manufacturing; (2) discuss general principles for regulatory application of PATs including principles of method validation, specifications, and feasibility of the parametric release concept; and (3) discuss necessary general FDA

guidance to facilitate the implementation of PATs. On June 13, 2002, the focus will be on the following two working groups: (1) Product and process development, and (2) process and analytical validation. The two working groups will be formed from the merging of the previous four PAT working groups, which included: (1) Product and process development; (2) process and analytical validation; (3) chemometrics; and (4) process analytical technologies, applications, and benefits.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by May 31, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 31, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Carolyn Jones at 301–827–7001 at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 20, 2002.

Linda A. Suydam,

Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–13107 Filed 5–23–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, (Pub. L. 92–463), announcement is made of the following National Advisory Committee scheduled to meet during the month of June 2002.

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages.

Date and Time: June 24, 2002, 8:30 a.m.–5 p.m., June 25, 2002, 8 a.m.–4 p.m.

Place: The Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

The meeting is open to the public.

Agenda items will include, but not be limited to: Welcome; plenary discussion of the role of the grant programs under Title VII, Part D, Public Health Service Act in meeting Public Health Preparedness objectives; status reports on the FY 2002 grant awards for the Area Health Education Centers, Health Education and Training Centers, Geriatric Education and Training Programs, Quentin N. Burdick Programs for Rural Interdisciplinary Training, Allied Health, Psychology, Chiropractic and Podiatric Medicine programs; report on the Multidisciplinary *Summit:* Changing Health Professions Education and Practice—A Focus on Quality for the 21st Century; presentations by speakers representing: the Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration; and Committee members. Meeting content will address the preparation of the Committee's annual report to the Secretary and the Congress and the scheduling of topics for the next Committee meeting in August 2002.

Public comment will be permitted before lunch and at the end of the Committee meeting on June 25, 2002. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, with a copy of their presentation to: Bernice A. Parlak, Executive Secretary, Division of State, Community, and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1898.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The Division of State, Community and Public Health will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file a request in advance for a presentation, but wish to make an oral statement may register to do so at the Doubletree Hotel, Rockville, Maryland on June 24, 2002. These persons will be allocated time as the Committee meeting agenda permits.

Anyone requiring information regarding the Committee should contact Bernice A. Parlak, Division of State, Community, and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 9–105,5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1898.

Proposed agenda items are subject to change as priorities dictate.

Dated: May 21, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–13165 Filed 5–23–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: April 2002

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of April 2002, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
Program-Related Convictions	
Ahmed, Amir	05/20/2002

Subject city, state	Effective date
Richmond, VA	
ARG Associates ..... Ellicott City, MD	05/20/2002
Beckerman, Joseph F ..... Georgetown, KY	05/20/2002
Borja, Cuauhtemoc ..... San Diego, CA	05/20/2002
Caldwell, Regina ..... Columbus, OH	05/20/2002
Camiolo, Christopher ..... Montverde, FL	05/20/2002
Carolina Urological Consultant Conway, SC	07/11/2001
Chyorny, Leonid ..... Los Angeles, CA	05/20/2002
Cichanowski, Doris Ann ..... Brooklyn Park, MN	05/20/2002
Davila-Aponta, Wanda ..... Tosa Alta, PR	05/20/2002
Der Gregorian, Alain Avans ..... Glendale, CA	05/20/2002
Donahue, Thomas P ..... Lafollette, TN	05/20/2002
Dzhragatspanyan, Arsen ..... Panorama City, CA	05/20/2002
Eason, Darrin Dwight ..... Detroit, MI	05/20/2002
Espinoza, Carlos Antonio ..... Gardena, CA	05/20/2002
Ferrer, Annilie Arcangel ..... Chowchilla, CA	05/20/2002
Gasisyan, Arsen ..... Glendale, CA	05/20/2002
Halas, John ..... Voorhees, NJ	05/20/2002
Kabrin, Marta ..... Mequon, WI	05/20/2002
Kirkland, Mattie ..... Catonsville, MD	05/20/2002
Mardin, Rober S ..... Granada Hills, CA	05/20/2002
Martin, Elizabeth ..... Marianna, FL	05/20/2002
McClatchy, Jessica Warren ..... Fergus Falls, MN	05/20/2002
Mkrtchyan, Ovsep ..... Los Angeles, CA	05/20/2002
Muniz, Ivette T ..... San Juan, PR	05/20/2002
Nicholson, Jennifer L ..... Columbus, OH	05/20/2002
Novosel, Mark Eugene ..... FT Lauderdale, FL	05/20/2002
Nunez, Perla ..... Victorville, CA	05/20/2002
Perez, Daisy ..... Miami, FL	05/20/2002
Pham, Michael Q ..... Long Beach, CA	05/20/2002
Pisarevsky, Yevgeny ..... Brooklyn, NY	05/20/2002
Plasencia, Daniel ..... Miami, FL	05/20/2002
Ramos, Daniel M ..... Miami, FL	05/20/2002
Ruiz, Reyna Isabel ..... South Gate, CA	05/20/2002
Santos, Fredesvinda ..... Miami Beach, FL	05/20/2002
Sosa, Lysette ..... Miami, FL	04/10/2001
Toman, John S ..... Mclean, VA	05/20/2002
Vargas, Laura Astor ..... Yakima, WA	05/20/2002
Washington, Patty ..... Columbus, OH	05/20/2002
Wellman, Mary Lou ..... Westlake, OH	05/20/2002

Felony Conviction for Health Care Fraud

Campos, Lucy B ..... Pleasanton, CA	05/20/2002
Caudle, Joel P ..... Brentwood, TN	05/20/2002
Funk, Dawn E ..... Broadalbin, NY	05/20/2002
Lepko, Ervin E ..... Englewood Cliffs, NJ	05/20/2002
Steward, Dwight ..... Washngton, DC	05/20/2002
Straface, Eugene ..... Limerick, PA	05/20/2002

Felony Control Substance Conviction

Amar, John Jason ..... Victorville, CA	05/20/2002
Boyd, Darryl ..... Fort Dix, NJ	05/20/2002
Connoyer, Caryl V ..... Bethalto, IL	05/20/2002
Hendricks, Jeffrey Phillip ..... Holland, MI	05/20/2002
Hennessey, Sandra J ..... Plainfield, VT	05/20/2002
Hill, Pamela Jane ..... Broken Arrow, OK	05/20/2002
Keenan, Patricia A ..... Twin Lakes, WI	05/20/2002
Landreth Serrano, Regina ..... Gatesville, TX	05/20/2002
Leonard, Elaine W ..... Newport News, VA	05/20/2002
Mchugh-Reiner, Jean ELIZA-BETH ..... St Charles, MO	05/20/2002
Mohrhardt, Debra Ann ..... Spring Lake, MI	05/20/2002
Newman, Jean M ..... Wilkes-Barre, PA	05/20/2002

Patient Abuse/Neglect Convictions

Allaman, Mary ..... Billings, MT	05/20/2002
Bishop, Katherine M ..... Oxford, MS	05/20/2002
Bivins, Loretha ..... State Line, MS	05/20/2002
Deloach, Terrance ..... Ellisville, MS	05/20/2002
Eaton, Brian James ..... Grass Valley, CA	05/20/2002
Hankins, Ronald E ..... Milwaukee, WI	05/20/2002
Harris, Daphne D ..... Louin, MS	05/20/2002
Hatfield, Billie ..... Falls of Rough, KY	05/20/2002
Joiner, Cynthia ..... Clarksdale, MS	05/20/2002
Mosely, Beverly ..... Meridian, MS	05/20/2002
Perez, Yolanda ..... Baltimore, MD	05/20/2002
Perrin, Douglas M ..... Lindenwold, NJ	05/20/2002
Rinehart, Jeffrey Paul ..... Blackwell, OK	05/20/2002
Rudd, Tonya L ..... Memphis, TN	05/20/2002
Sabate, Neonita ..... Clinton, NJ	05/20/2002
Smith-Owens, Joyce Francine Canton, OH	05/20/2002
Stowell, Kevin B ..... Cleveland, OH	05/20/2002
Street, Eugenia A ..... N Charleston, SC	05/20/2002
Stubbs, Darryl ..... Temple Hills, MD	05/20/2002
Taylor, Tosha L ..... Sandusky, OH	05/20/2002
Tyson, Kuyana S ..... Syracuse, NY	05/20/2002

Conviction for Health Care Fraud

Gunnoe, Eliza T ..... Newbury, MA	05/20/2002

Conviction-Obstruction of an Investigation

Leggett, Bethaney Moreau ..... Lafayette, LA	05/20/2002

License Revocation/Suspension/ Surrendered

Abraham, Annalyn ..... Richfield, UT	05/20/2002
Angel, David Lewis Jr ..... Greenwood, IN	05/20/2002
Arbanas, Gregory Christopher Mountain View, CA	05/20/2002
Baber, Karly Robyn ..... Abilene, TX	05/20/2002
Batsford, Edgar W ..... Smithfield, RI	05/20/2002
Berryhill, Wesley Eugene ..... Batesville, AR	05/20/2002
Blackwood-Day, Jane A ..... St Johnsbury Ctr, VT	05/20/2002
Boales, Jerry Lee ..... Eager, AZ	05/20/2002
Borland, Melissa G ..... Pawtucket, RI	05/20/2002
Breaux, Davina ..... Lafayette, LA	05/20/2002
Bretton, Kimberly A ..... S Easton, MA	05/20/2002
Brown, Elizabeth Anne ..... Oklahoma City, OK	05/20/2002
Brown, Jimmy William ..... De Witt, AR	05/20/2002
Calhoon, Dawn Marie ..... Austin, TX	05/20/2002
Callagy, Patti J ..... N Andover, MA	05/20/2002
Carson, Mallory D ..... Mesa, AZ	05/20/2002
Cascio, Daniel ..... Dover, NJ	05/20/2002
Castleberry, Sheila R ..... Brookport, IL	05/20/2002
Cheng, Samuel K ..... Woodland Hills, CA	05/20/2002
Chervenka, Mary Kopriva	05/20/2002

Subject city, state	Effective date
Lake Ridge, VA	
Chiaverelli, Patricia Groves ..... Philadelphia, PA	05/20/2002
Ciell, Michael P ..... Safety Harbor, FL	05/20/2002
Cochara, John R ..... Twin Lakes, WI	05/20/2002
Cook, Paul Allen ..... Whitaker, PA	05/20/2002
Crockett, Karen H ..... Deerfield Beach, FL	05/20/2002
Cullison, David John ..... Huntingdon Valley, PA	05/20/2002
Daines, Lori S ..... Logan, UT	05/20/2002
Dane, Mellissa L ..... Bennington, VT	05/20/2002
Danko, Rose M ..... Branford, CT	05/20/2002
Daruka, Patricia A ..... Warwick, RI	05/20/2002
David, Ruth Richter ..... Cedar Rapids, IA	05/20/2002
Decarlo, Roselle ..... Hoffman Estates, IL	05/20/2002
Dichter, Terry A ..... Huntington Park, CA	05/20/2002
Dirks, Holly E ..... Barrington, RI	05/20/2002
Dixon, Leonaine Wells ..... Claremont, CA	05/20/2002
Dodge, David Child III ..... Denver, CO	05/20/2002
Dyman, Katharine E ..... Middletown, RI	05/20/2002
Everett, Steven Tyler ..... Port St Luce, FL	05/20/2002
Figoten, Bruce Barry ..... Woodland Hills, CA	05/20/2002
Fletcher, Roberta ..... Brattleboro, VT	05/20/2002
Fortin, Jacqueline Annette ..... Benton, AR	05/20/2002
Fruhwirth, Kathleen H ..... Harrisburg, PA	05/20/2002
Funicella, Karen ..... Lynn, MA	05/20/2002
Gibson, Kimberly G ..... St James, MO	05/20/2002
Gilbert, Scott E ..... Tulsa, OK	05/20/2002
Godard, Elaine Burns ..... E Stroudsburg, PA	05/20/2002
Gomes, Clarisse D ..... Pawtucket, RI	05/20/2002
Green, Gregory Neill ..... St Louis, MO	05/20/2002
Greenhill Delong, Edith ..... Jefferson, TX	05/20/2002
Grove, Patricia M ..... Rutland, VT	05/20/2002
Gruer, Barry Howard ..... San Diego, CA	05/20/2002
Hall, Lisa Michelle ..... Mesquite, TX	05/20/2002
Hanzlik, Renata Maria ..... New York, NY	05/20/2002
Harris, Candie L ..... Broadview Hgts, OH	05/20/2002
Harris, Juanita ..... Chicago, IL	05/20/2002
Heard, Lisa ..... Bossier City, LA	05/20/2002
Henriques, Gavin Anthony ..... Los Angeles, CA	05/20/2002
Henson, Kathy Vaughn ..... Bristol, VA	05/20/2002
Holbert, Roschell W ..... Chicago, IL	05/20/2002
Holland, Pamela ..... Harrisonburg, LA	05/20/2002
Hopkins Freeman, April C ..... Lubbock, TX	05/20/2002
Horne, Kathleen M ..... Woodsville, NH	05/20/2002
Howarter, Brandon G ..... Canton, IL	05/20/2002
Howe, Mary A ..... Rockford, IL	05/20/2002
Hughes, Cathy A ..... Chicago, IL	05/20/2002
Hulet, Geoffrey A ..... Chicago, IL	05/20/2002
Hulse, Marlene Brown ..... Blackfoot, ID	05/20/2002
Hutchinson, Christine E ..... S Burlington, VT	05/20/2002
Jackson, Kelly M ..... White Hall, IL	05/20/2002
Jackson, Dedire L ..... Chicago, IL	05/20/2002
Jasmine, Annetta ..... Lake Charles, LA	05/20/2002
Jones, Sharon ..... Chicago, IL	05/20/2002
Joo, Young Hwa ..... Cyrpress, CA	05/20/2002
Jordan, Maria A ..... Calumet City, IL	05/20/2002
Karp, Cherie F ..... Oakdale, NY	05/20/2002
Kaswan, Malcolm ..... Water Mill, NY	05/20/2002
Kellis, Donald Leroy ..... Boise, ID	05/20/2002
Kemp, Anita Kay ..... Roanoke, TX	05/20/2002
Kennedy, Janis Elaine ..... Palmdale, CA	05/20/2002
King, Paula ..... Houma, LA	05/20/2002
Kline, Brandy D ..... Knoxville, IA	05/20/2002
Kofman, Glenn ..... Wheeling, IL	05/20/2002
Krajnc, Sidnee L ..... Price, UT	05/20/2002
Larvey, Kathleen M ..... Kingston, MA	05/20/2002
Latawiec, Andrea ..... Clark, NJ	05/20/2002
Leafgreen, Becky A ..... Galesburg, IL	05/20/2002
Leth, Ida Kelly ..... St Edward, NE	05/20/2002
Lichter, Debra Gabbard ..... Philadelphia, PA	05/20/2002
Manno, Fred ..... Monroeville, PA	05/20/2002
Marecic, Judith A ..... Pittsburgh, PA	05/20/2002
McCusker, Charles ..... Murray, UT	05/20/2002
McGuire, Patricia J ..... Oak Lawn, IL	05/20/2002
McLaughlin, Vicky D ..... Mount Vernon, IL	05/20/2002
McPherson, Madeleine T ..... Rochester, NY	05/20/2002
Missildine, Pamela S ..... Eufaula, AL	05/20/2002
Morales, Carmen L ..... Chicago, IL	05/20/2002
Morgan, Jeanette M ..... Swansea, IL	05/20/2002
Mulfinger, George L ..... Pasadena, CA	05/20/2002
Murphy, Ronda F ..... Carterville, IL	05/20/2002
Nielsen, Laura Joan ..... Pocatello, ID	05/20/2002
Oberlender, Sheri Lynn Craig .. Sandpoint, ID	05/20/2002
Oswald, Thomas Allen ..... Wadsworth, OH	05/20/2002
Ott, Richard M ..... St Petersburg, FL	05/20/2002
Owens, Rhonda A ..... Chicago, IL	05/20/2002
Pansegrau, Mary Catherine ..... Correctionville, IA	05/20/2002
Parris, Russell ..... Aurora, CO	05/20/2002
Pierce, Grant M ..... Rockford, IL	05/20/2002
Pille, Mary Knight ..... Herman, NE	05/20/2002
Plachy, Robert Thomas Jr ..... Amagansett, NY	05/20/2002
Provenzano, Frank J ..... Uniontown, PA	05/20/2002
Quevedo, Ranona Dale ..... Rockford, IL	05/20/2002
Rachel Pharmacy Discount, Inc Hialeah, FL	05/20/2002
Ratcliff, Michelle Lee ..... Henderson, TX	05/20/2002
Reardon, Richard R ..... Phoenix, AZ	05/20/2002
Reber, Mary Ann S ..... Lytle, TX	05/20/2002
Reed, Lorraine ..... New Hope, PA	05/20/2002
Reid, Kendall A ..... Chicago, IL	05/20/2002
Rheinheimer, Heide M ..... Atlanta, GA	05/20/2002
Ripley, Elizabeth ..... Middleburg, FL	05/20/2002
Rizzo, Michael J ..... Flinton, PA	05/20/2002
Robinson, Susan Brooks ..... St Petersburg, FL	05/20/2002
Rogers, Johnna E ..... Warrenton, MO	05/20/2002
Rogers, Jason A ..... Miamesburg, OH	05/20/2002
Rooke, Jacki M ..... Earlysville, VA	05/20/2002
Rothermel, Julie A ..... N Providence, RI	05/20/2002
Rouse, Judy L ..... Cuba, MO	05/20/2002
Rusch, Beverly ..... Beulah, ND	05/20/2002
Rust, Gretchen Louise ..... Miles City, MT	05/20/2002
Ryan, Derald L ..... Glendale, AZ	05/20/2002
Sanders, Dawn Catrese ..... University Park, IL	05/20/2002
Schlossman, David Craig	05/20/2002

Subject city, state	Effective date
Overland Park, KS	
Schnoor, Tami S ..... Kansas City, MO	05/20/2002
Schoenhoeft, Joseph ..... Susanville, CA	05/20/2002
Sefter, Anne H ..... Appomattox, VA	05/20/2002
Shadrick, Lisa B ..... Salt Lake City, UT	05/20/2002
Shaffer Beard, Debra Michelle Oklahoma City, OK	05/20/2002
Shodeinde, Diana F ..... Corona, CA	05/20/2002
Silfies, Jayne ..... Waynesburg, PA	05/20/2002
Soukup, Richard A ..... Riverside, IA	05/20/2002
Sporn, Alexander L ..... Rego Park, NY	05/20/2002
Stacy, Daniel Franklin ..... Coronado, CA	05/20/2002
Stanford, Samuel R ..... Midlothian, VA	05/20/2002
Staple, Andrea Read ..... San Bernadino, CA	05/20/2002
Stapley, Susan Ilene Buchanan Atascadero, CA	05/20/2002
Stephenson, Melanie Ann ..... Gallipolis, OH	05/20/2002
Stevens, Ami Rosemarie ..... Zanesville, OH	05/20/2002
Suliveres, Sara-Jane ..... St Johnsbury, VT	05/20/2002
Sutherland Ebel, Amy Jo ..... Enid, OK	05/20/2002
Thomas, Adriese ..... Chicago, IL	05/20/2002
Tilghman, James E ..... Cape Girardeau, MO	05/20/2002
Tillery, Merlene ..... E St Louis, IL	05/20/2002
Torres, Wilhelmina C ..... Oak Lawn, IL	05/20/2002
Travelstead-Russell, Lorie A .... Galatia, IL	05/20/2002
Tummillo, Marie E ..... Manakin Sabot, VA	05/20/2002
Turner, John Melton ..... Menlo Park, CA	05/20/2002
Ty, Blandina F ..... Closter, NJ	05/20/2002
Vangraefschepe, Laurie June .. Billings, MT	05/20/2002
Vespe, John Robert ..... Phoenix, AZ	05/20/2002
Visacki, Miodrag ..... Sarasota, FL	05/20/2002
Volpez, Pablo Enriquez ..... Oakland, CA	05/20/2002
Vu, Hong T ..... Chicago, iL	05/20/2002
Watson, Lesa ..... Shreveport, LA	05/20/2002
Wechling, Clare Deane ..... O'Fallon, MO	05/20/2002
Weremeichik, Jessica L ..... S Burlington, VT	05/20/2002
Wexler, Harold Mark ..... Chatsworth, CA	05/20/2002
White, Tracy Lyons ..... Phoenix, AZ	05/20/2002
White, Karrey Lee Stone ..... Meridian, ID	05/20/2002
Wilber, Harold ..... Syracuse, NY	05/20/2002
Wilhelm, Melissa J ..... Chicago, IL	05/20/2002
Williams, Vickie E ..... Alton, IL	05/20/2002
Wilson, Andrea ..... Acra, NY	05/20/2002
Witter, Deborah Sue ..... Mesa, AZ	05/20/2002
Woodruff, Holly Lynn Fabricus Gering, NE	05/20/2002
Wright, Cecelia R ..... Chicago, IL	05/20/2002
Wyatt-Riley, Sharon L ..... Princeton, IN	05/20/2002
Yates, Debra Lynne ..... Costa Mesa, CA	05/20/2002
Yavel, Robert Paul ..... Jamaica, NY	05/20/2002
Yemat, Alex Alberto ..... Miami, FL	05/20/2002
Young, Hui Kim ..... Alcoa, TN	05/20/2002
Federal/State Exclusion/Suspension	
Pates, Rosemary ..... St Louis, MO	05/20/2002
Fraud/Kickbacks	
Bulgeron, Richard ..... San Antonio, TX	11/16/2000
Centafanti, Gary D ..... Naples, FL	04/03/2001
Centafanti, Cathy T ..... Naples, FL	04/03/2001
Lopez, Anthony R ..... El Paso, TX	02/14/2002
Mejia, Manuel ..... Lytle, TX	10/24/2000
Salerno, James G ..... Ahoskie, NC	12/19/2001
Sanvito, Anthony V ..... Coraopolis, PA	12/13/1999
Owned/Controlled by Convicted Entities	
Memorial Medical Center ..... Mountain Home, ID	05/20/2002
Neurodiagnostic Systems, Inc .. Montverde, FL	05/20/2002
Rozenberg Chiropractic ..... Hicksville, NY	05/20/2002
Default on Heal Loan	
Lewis, Stuart Todd ..... Boynton Beach, FL	05/20/2002
Mercado, Rafael L ..... San Antonio, TX	04/02/2002
Rosales, Anna Marie ..... San Antonio, TX	04/02/2002
Winfrey, Brian K ..... Astoria, NY	05/20/2002
Wisk, Duane F ..... Gross Pointe, MI	03/12/2002

Dated: May 15, 2002.

Calvin Anderson, Jr.,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 02–13051 Filed 5–23–02; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities (OBA); Recombinant DNA Research: Notice Under the NIH Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice.

SUMMARY: The NIH is announcing that Appendix M–I–C–3 and Appendix M–I–C–4 of the *NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines)* became effective on January 24, 2002, the date of OMB approval of those information collection requirements. Also, the NIH is correcting the date for filing annual reports with the NIH, per Appendix M–I–C–3, to be within 60 days of the anniversary date that the IND went into effect. Finally, notice is given that a new version of the *NIH Guidelines* is available on the OBA Web site, which includes these changes as well as other non-substantive corrections, updates, and navigational enhancements.

FOR FURTHER INFORMATION CONTACT: Allan C. Shipp, NIH Office of Biotechnology Activities by phone at 301–435–2152, by e-mail at *shippa@od.nih.gov,* or by mail at NIH OBA, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892–7985.

SUPPLEMENTARY INFORMATION: On November 19, 2001, NIH OBA published a notice of amendments to the *NIH Guidelines* in the **Federal Register** (66 FR 57970). Those amendments became effective on December 19, 2001, except for the amendments to Appendix M–I–C–3 (Annual Reports) and Appendix M–I–C–4 (Safety Reporting), which were published for public comment to OMB regarding the paperwork burden of those information collection requirements. It was stated that those Appendices would take effect upon OMB approval. That approval was given on January 24, 2002.

Further, Appendix M–I–C–3 as published in the **Federal Register** on November 19, 2001 (66 FR 57970, specifically 57975), stated that the annual report to OBA is to be filed within 60 days of the date that the IND

was filed. Appendix M–I–C–3 has been corrected to state that annual reports are to be filed with OBA at the same time that they are filed with the Food and Drug Administration (FDA)—within 60 days of the anniversary of the date the IND went into effect. This filing requirement becomes effective with respect to the first annual safety report filed after January 24, 2002.

Other minor, non-substantive changes have been made to the *NIH Guidelines,* as warranted. In addition, for ease in navigating the document, the *NIH Guidelines* have been fully indexed. The electronic version includes hyperlinks from the index to relevant portions of the body of the document. Thus, when users identify a section of interest in the index, by simply clicking on the title of that section, they will be immediately brought to the corresponding portion of the *NIH Guidelines.*

All of these changes are listed in detail in a Summary of Amendments and Corrections that can be accessed, along with the new version of the *NIH Guidelines,* at: *http://www4.od.nih.gov/oba/rac/guidelines/guidelines.html.*

Dated: May 17, 2002.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 02–13057 Filed 5–23–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); Availability of Data From Preliminary Studies and Proposed Study Protocols for Cancer Bioassays of Hexavalent Chromium in Rats and Mice; Request for Public Comment and Notice of Public Meeting

Summary

Hexavalent chromium (CAS number 18540–29–9) was nominated to the NTP for study of its potential toxicity and carcinogenicity when administered to animals in drinking water (*see* **Federal Register:** May 7, 2001, Vol. 66, No. 88, pages 23037–23039). Members of the California legislative delegation, the California Environmental Protection Agency, and the California Health and Human Services Agency nominated hexavalent chromium to the NTP for study. The basis for the nomination is a document prepared by the California Environmental Protection Agency's (EPA) Office of Environmental Health Hazard Assessment titled ''Public Health Goal for Chromium in Drinking Water'', a copy of which is available on the NTP's Web site *http://ntp-server.niehs.nih.gov* (*see* NTP Studies of Hexavalent Chromium Compounds under What's New?).

The purpose of this notice is to announce:

(1) The availability of data from studies designed to assess the absorption of chromium by rats, mice and guinea pigs receiving hexavalent chromium, as sodium dichromate dihydrate, in drinking water;

(2) The design and availability of data from 90-day oral toxicity studies in rats and mice receiving hexavalent chromium in drinking water;

(3) A proposed design for 2-year rodent cancer studies of hexavalent chromium in drinking water;

(4) A public meeting to discuss these data and the proposed design for 2-year studies; and

(5) A request for public comments on these data and the proposed design for the 2-year studies.

Public Meeting

A public meeting will be held July 24, 2002 in the Rodbell Auditorium, Rall Building, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 T.W. Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 8:30 AM and is open to the public. Attendance at this meeting is limited only by the space available. Individuals who plan to attend are asked to register with the NTP executive secretary (*see* contact information below). The names of those registered to attend will be given to the NIEHS Security Office in order to gain access to the campus. Persons attending who have not pre-registered may be asked to provide pertinent information about the meeting, *i.e.,* title or host of meeting before gaining access to the campus. All visitors will need to be prepared to show 2 forms of identification (ID), *i.e.,* driver's license and one of the following: company ID, government ID, or university ID. Also those planning to attend who need special assistance are asked to notify the NTP executive secretary in advance of the meeting (*see* contact information below).

A tentative agenda is provided below and includes opportunity for oral public comment. A scientific panel of experts (''the Panel'') will discuss the data, to date, obtained from NTP studies of hexavalent chromium administered as sodium dichromate dihydrate and the proposed study design for 2-year rodent cancer studies (*see* below, NTP Studies). The agenda and roster of the Panel will be available prior to the meeting on the NTP Web site (*http://ntp-server.niehs.nih.gov*) and upon request to the executive secretary at the address given below. Following the meeting, summary minutes will be available electronically on the NTP Web site and in hardcopy upon request to the executive secretary.

Tentative Agenda

8:30 AM
Welcome and introductions

8:40 AM
Overview of the NTP
Hexavalent chromium nomination
NTP studies on hexavalent chromium
Proposed design for 2-year studies
Public comments

Noon
Lunch

1:00 PM
Presentation of remarks by scientific expert panel
General discussion

3:30 PM
Adjourn

Request for Public Comment

The NTP meeting on hexavalent chromium is open to the public and public comment is welcome on the data from the 21-day and 90-day studies, the proposed NTP 2-year study plans, and any other issues related to the evaluation of the toxicity and carcinogenicity of hexavalent chromium in drinking water. Time will be provided at the meeting for oral public comments and persons requesting time for an oral presentation are asked to contact the NTP Executive Secretary Dr. Mary S. Wolfe, (P.O. Box 12233, MD A3–01, Research Triangle Park, NC 27709, phone: 919–541–0530, fax: 919–541–0295, e-mail: *liaison@starbase.niehs.nih.gov*). Persons registering to make oral comments are asked to provide contact information, including name, affiliation, mailing address, phone, fax, e-mail, and supporting organization (if any). Each speaker is also asked to provide, if possible, a written copy of the statement by July 15, 2002, to enable review by the Panel and NTP staff prior to the meeting. The written statement can supplement and may expand the oral presentation. At least seven minutes will be allotted to each speaker, and if time permits, may be extended to ten minutes. Each organization is allowed one time slot for an oral presentation. Registration for making public comments will also be available on-site. If registering on-site to speak and reading comments from printed copy, the speaker is asked to provide 15 copies of the statement. These copies

will be distributed to the Panel and NTP staff and will be used to supplement the record.

Written comments, in lieu of an oral presentation, are also welcome. The comments should include contact information, including name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any) and preferably be received by July 15, 2002, to enable review by the Panel and NTP staff prior to the meeting as well as to supplement the record.

NTP Studies

Hexavalent chromium (CAS number 18540–29–9) was nominated to the NTP for study of its potential toxicity and carcinogenicity when administered to animals in the drinking water. Hexavalent chromium is a known human carcinogen (*http://ntp-server.niehs.nih.gov*, see Report on Carcinogens). It has been proposed that the reduction of hexavalent chromium to the trivalent form in the gut provides a physiological barrier such that when exposure to hexavalent chromium occurs from drinking water, the absorption of hexavalent chromium would not be sufficient to cause cancer. Public comments received in response to the earlier **Federal Register** notice (*see* above) suggested that this reductive mechanism would be expected to be more effective in humans and other animals lacking an anatomical forestomach than in rats and mice that have a forestomach.

To address these considerations, the NTP carried out studies in which rats, mice and guinea pigs (which lack a forestomach) received drinking water containing sodium dichromate dihydrate for 21 days. After that time, the animals were sacrificed and blood, kidney and bone were collected and analyzed for total chromium. The complete protocol and data from these studies are available on the NTP Web site (*http://ntp-server.niehs.nih.gov*).

Additionally, the NTP has completed 90-day toxicity studies of standard design in which F344/N rats and B6C3F1 mice of both sexes received control water or one of 5 concentrations (62.5, 125, 250, 500, or 1000 mg/L) of hexavalent chromium in their drinking water. The studies included measurements of clinical chemistry indices and the animals received a complete histopathological evaluation. The protocol outline for these studies is also available on the NTP Web site and data from the 90-day studies are anticipated to be available on the NTP Web site approximately one month prior to the meeting.

Also available on the NTP Web site is a draft protocol that outlines 2-year toxicity and carcinogenicity studies of hexavalent chromium in rats and mice. The NTP will establish the final design for these studies following completion and evaluation of the 90-day studies, evaluation of the data for total chromium tissue concentration from the 21-day studies, and consideration of input from the Panel, all written received in response to this notice, and oral public comments received at the public meeting.

Background

Chromium is a naturally occurring element, present in several valence states. The most common valence states are trivalent (Chromium III), hexavalent (Chromium VI), and elemental chromium (0). Chromium III is an essential nutrient forming part of a complex known as the glucose tolerance factor. Chromium compounds are stable in the trivalent state and occur in nature most commonly at this oxidation level. Hexavalent chromium compounds are the next most stable forms, although these rarely occur in nature and are typically associated with anthropogenic (human activities) sources.

Hexavalent chromium is more toxic than trivalent chromium, and is absorbed from the gut more readily than trivalent chromium. Hexavalent chromium is an oxidant and it reduces to trivalent chromium, passing through the intermediate reactive V and IV valence states. The toxicity of hexavalent chromium is thought to result from either direct binding of these intermediates to cellular constituents or through the generation of free radicals.

Prolonged inhalation of hexavalent chromium is an established cause of occupational lung cancer in chromate production workers and people engaged in the manufacture of chromate pigments. This finding is supported by inhalation studies in rats and mice that have shown lung tumors following exposure to calcium chromate or sodium dichromate.

Orally administered chromium compounds are relatively poorly absorbed, with most estimates in the range of 0.5 to 2%. The absorption of trivalent chromium is approximately one quarter that of the hexavalent form. Hexavalent chromium reduces to trivalent chromium in the stomach, and this reduction may potentially limit its systemic availability. This ''protective'' mechanism is not complete, however, because studies have shown that orally administered hexavalent chromium, when given at doses far below those where trivalent chromium showed no adverse effect, caused liver and kidney toxicity. Other concerns with hexavalent chromium given orally involve gastrointestinal effects. Acute gastritis is a common finding in humans who accidentally or intentionally ingested various hexavalent chromium compounds. Also, in a study reported in 1968, a small increase in primarily benign forestomach papillomas was seen in mice exposed to potassium chromate in the drinking water at 9 mg/kg Chromium VI for three generations over 880 days.

Dated: May 16, 2002.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 02–13059 Filed 5–23–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Announcement of Availability of Background Documents for Substances Nominated for Listing in the Report on Carcinogens, Eleventh Edition

Availability of Background Documents

The National Toxicology Program (NTP) announces the availability of the background documents for four nominations under consideration for listing in the Report on Carcinogens (RoC), Eleventh Edition (''the Eleventh RoC''). The background documents are available for the nominations: *Cobalt Sulfate, Diethanolamine, Nitromethane*, and *4,4'-Thiodianiline*. They can be obtained electronically on the NTP Web site: *http://ntp-server.niehs.nih.gov* (select Report on Carcinogens) or in hardcopy by contacting Dr. C. W. Jameson at the following address: National Toxicology Program, Report on Carcinogens, 79 Alexander Drive, Building 4401, Room 3118, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–0144, e-mail: *jameson@niehs.nih.gov*.

The background documents for these four nominations are the first to be released for nominations under consideration for the Eleventh RoC. These documents are being made available at this time in response to the October, 1999 public meeting that discussed the preparation and review of the Report on Carcinogens where concerns were expressed regarding the need to increase the time allotted for public review and comment on the RoC

background documents. The NTP will make all future RoC background documents available as soon as they are completed. All future notifications about the availability of background documents for other nominations under consideration for the Eleventh RoC will be provided through NTP list-server announcements. Individuals or groups can subscribe to the NTP list-server in several ways: (1) By registering online at *http://ntp-server.niehs.nih.gov*, (2) by sending an e-mail to *ntpmail-request@list.niehs.nih.gov* with the word ''subscribe'' as the body of the message, or (3) by contacting the NTP Office of Liaison and Scientific Review (919–541–0530 or *liaison@starbase.niehs.nih.gov*). Individuals or groups who have already subscribed to the NTP list-server do not need to subscribe again.

The NTP has identified the nominations under consideration for listing in the Eleventh RoC in previous **Federal Register** notices (**Federal Register:** July 24, 2001 (Vol. 66, No. 142) pages 38430–38432 and **Federal Register:** March 28, 2002 (Vol. 67, No. 60) page 14957). The NTP follows a formal process for the review of nominations that includes multiple phases of scientific peer review and several opportunities for public comments. Additional information about the review of nominations for the Eleventh RoC, including the date and location of the public meeting of the NTP Board of Scientific Counselors RoC Subcommittee and the deadline for submission of public comments for consideration at that review, will be announced through future **Federal Register** and NTP list-server notices.

Background Information about the RoC

The RoC is an informational, scientific, and public health document that identifies and discusses agents, substances, mixtures, and exposure circumstances that may pose a carcinogenic hazard to human health. The report is prepared biennially in response to section 301 of the Public Health Service Act, as amended. The NTP welcomes nominations for listing in or changing the current listing in the RoC at any time. Additional information about the nomination process, the criteria for listing a nomination in the RoC, and the formal multi-step review process for nominations is available on the NTP Web site (*http://ntp-server.niehs.nih.gov*, select Report on Carcinogens) or from Dr. Jameson at the address provided above.

Dated: May 9, 2002.

Samuel H. Wilson,

Deputy Director, National Toxicology Program.

[FR Doc. 02–13058 Filed 5–23–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. CFDA 93.598]

ORR Announcement for Services To Victims of a Severe Form of Trafficking

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Request for Applications for projects to increase awareness about human trafficking and to support services for individuals determined to be victims of a severe form of trafficking. This notice supersedes the notice published in the **Federal Register** on February 8, 2002 (67 FR 6048).

SUMMARY: This ORR announcement invites submission of grant applications for funding, on a competitive basis, in three categories: Category 1—Local/Community Outreach and/or Services for Victims of a Severe Form of Trafficking; Category 2—Technical Assistance and Training; and Category 3—Information Discovery for National Outreach/Educational Campaign.

DATES: July 31, 2002 is the closing date for all categories. Please note that all applications must be received (as opposed to postmarked) in ACF by this date or they will be considered late.

Announcement Availability: The program announcement and the application materials are available from Jay Womack and Neil Kromash, Office of Refugee Resettlement (ORR), 370 L'Enfant Promenade SW, Washington, DC 20447 and from the ORR website at: *www.acf.hhs.gov/programs/orr*

FOR FURTHER INFORMATION CONTACT: For all categories, contact Jay Womack, (202) 401–5525, jwomack@acf.hhs.gov or Neil Kromash, (202) 401–5702, *nkromash@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: Background, legislative authority, funding availability, CFDA Number, eligible applicants, project and budget periods, and for each of the three categories—program purpose and objectives, allowable and non-allowable activities, and review criteria.

Part II: The Review Process—intergovernmental review, initial ACF screening, and competitive review.

Part III: The Application—application forms, application submission and deadlines, certifications, general instructions for preparing a full project description, and length of application.

Part IV: Post-award—applicable regulations, treatment of program income, and reporting requirements.

Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The following information collections are included in the program announcement for categories 1–3: OMB Approval No. 0970–0139, ACF UNIFORM PROJECT DESCRIPTION (UPD) attached as Appendix A, which expires 12/30/03 and OMB Approval No. 0970–0036, ORR Quarterly Performance Report (QPR) and Schedule C which expire 7/31/02. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part I: Background

Since 1994, ORR has provided assistance for social services to meet the needs of newly arriving refugees through a standing announcement. In May 2001, ORR modified that announcement to include services to victims of a severe form of trafficking. However, in February 2002, ORR further modified Category 3 of the existing standing announcement by removing services to victims of a severe form of trafficking in order to proceed with a new and separate announcement specifically aimed at promoting awareness about human trafficking and addressing the service needs of victims of a severe form of trafficking. That notice of modification was published in the **Federal Register** on February 8, 2002 (67 FR 6048).

This new Announcement establishes a new set of three categories designed to increase awareness about trafficking in persons and provide assistance to victims of a severe form of trafficking.

Legislative Authority

These grants are authorized by three provisions of law: section 107(b)(1)(B) of the Trafficking Victims Protection Act of 2000 (TVPA), section 412(c)(1)(A) of the

Immigration and Nationality Act (INA) (8 U.S.C. 1522(c)(1)(A)), as amended, and section 106(b) of the TVPA.

Section 107(b)(1)(B) of the TVPA, Pub. L. 106–386, Division A, 114 Stat. 1464 (2000), provides that ''[federal agencies] shall expand benefits and services to victims of severe forms of trafficking in persons in the United States, without regard to the immigration status of such victims.'' Section 107(b) of the TVPA also provides that individuals who are determined to be victims of a severe form of trafficking will be issued a certification letter (for adults) or eligibility letter (for minors under the age of 18) from the U.S. Department of Health and Human Services (HHS). In conducting a benefits eligibility determination for a victim of a severe form of trafficking, benefit-granting agencies should accept the HHS certification letter or HHS eligibility letter for minors in lieu of documentation from the Immigration and Naturalization Service and as proof of a status that confers eligibility for benefits.

Section 412(c)(1)(A) of the INA authorizes the Director ''to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—(i) to assist refugees in obtaining the skills which are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional refresher training, and other re-certification services; (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services.''

Section 106(b) of the TVPA provides: ''The President, acting through the Secretary of Labor, the Secretary of Health and Human Services, the Attorney General, and the Secretary of State, shall establish and carry out programs to increase public awareness, particularly among potential victims of trafficking, of the dangers of trafficking and the protections that are available for victims of trafficking.

Funding Availability

In FY 2002, ORR expects to award an estimated $3.9 million in funds that were appropriated to carry out the Trafficking Victims Protection Act of 2000. ORR expects to make approximately 8–10 grants under Category 1—Local/Community Outreach and/or Services for Victims of a Severe Form of Trafficking ranging from $50,000 to $250,000 for a total of up to $2,500,000; renewable on a yearly basis for up to 3 years, subject to availability of funds; one grant under Category 2—Technical Assistance and Training ranging from $300,000 to $500,000 for a total of up to $500,000 per year, renewable on a yearly basis for up to 3 years, subject to availability of funds; and one grant under Category 3—Information Discovery for National Outreach/Educational Campaign for a total of up to $900,000 per year, renewable on a yearly basis for up to 3 years, subject to availability of funds.

The Director reserves the right to award less or more than the funds described in this announcement. In the absence of worthy applications the Director may decide not to make an award if deemed in the best interest of the government. Funding availability for future years is at the Director's discretion.

CFDA Number—93.598

Eligible Applicants

In Categories 1 and 2 public and private nonprofit organizations, including faith-based organizations, are eligible to apply for these grants (see § 412(c) of the INA). ORR expects that applicants will coordinate with other local organizations in considering projects and proposing services. In Category 3, any entity is eligible to apply (see section 106(b) of the TVPA), although HHS funds may not be paid as profit to any recipients even if the recipient is a commercial organization (45 CFR 74.81).

Any private nonprofit organization submitting an application must submit proof of its nonprofit status at the time of submission. A nonprofit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate.

An applicant may submit more than one application under this announcement, but must apply separately for each category.

Project and Budget Periods

This announcement is inviting applications in Categories 1, 2, and 3 for project periods of up to three years. Awards, on a competitive basis, will be for a one-year budget period although project periods may be up to three years. Applications for continuation grants funded under these awards, beyond the one-year budget period but within the three-year project period, will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Category 1—Local/Community Outreach and/or Services for Victims of a Severe Form of Trafficking

Purpose and Objectives

The purpose of Category 1, Local/Community Outreach and/or Services for Victims of a Severe Form of Trafficking, is multifaceted. It combines the need to increase local/community awareness about the burgeoning problem of human trafficking with the need to provide resources that will address the needs of individuals determined to be victims of a severe form of trafficking. Category 1 applications may choose to concentrate exclusively on one of these two areas, or focus more comprehensively on a combination of activities that incorporates both.

Local/Community Outreach

The emphasis on Category 1 is to provide state and local law enforcement, public and private service providers, non-governmental organizations, immigrant and refugee communities, and individual community members with opportunities to learn about the Trafficking Victims Protection Act of 2000 (TVPA). The TVPA has presented an unprecedented opportunity to address the previously hidden problem of human trafficking. However, knowledge of the TVPA is limited among service professionals, law enforcement agencies, and the general public. Knowledge of benefits available to victims is similarly limited, especially among groups that do not normally access benefits or have connections with benefit-providing agencies and organizations.

Educational opportunities need to be extended to these groups to allow them to learn about the existence of human trafficking within the United States and to recognize trafficking, particularly in their local communities. Integral in these outreach activities should be familiarity with the legal definition of ''severe forms of trafficking in persons'' as described in the TVPA. Subsequently, a clear understanding should be established of the criteria necessary to qualify as a victim of a severe form of trafficking for benefits and services purposes.

Once trafficking victims have been identified, organizations must be empowered to provide victims with additional information and resources to access services available to them. Law enforcement agencies that have contact with immigrant or refugee populations must also be educated to look below the surface of people's circumstances in such areas as prostitution and immigrant labor. Service providers need to learn about the varied backgrounds from where the victims come and most importantly the unique issues that trafficking victims will present following their emancipation.

Organizations must establish that within their geographic locality/area there is a reasonable expectation that victims of a severe form of trafficking may be identified. Successful applicants will consider which services need to be enhanced or increased in light of increased community awareness of trafficking.

ORR is interested in providing resources for organizations to cover the costs of reaching out to community-based organizations so that victims are identified where they have the best chance for receiving assistance. In turn, communities where outreach and educational opportunities are being extended may experience an increase in the numbers of victims being identified and requesting services.

Services to Victims of a Severe Form of Trafficking

Through Category 1, Services to Victims of a Severe Form of Trafficking, ORR seeks to provide resources that will address the needs of individuals determined to be victims of a severe form of trafficking. Victims must be the recipients of a certification or eligibility letter from HHS in order to gain access to this assistance. We believe that enhanced case management, education, culturally and linguistically appropriate linkages and coordination with other service providers contribute to the overall well-being of trafficking victims. Victims may also require initial assistance accessing refugee and/or mainstream services for which they are eligible. The services funded through Category 1 should enhance the likelihood of victims of a severe form of trafficking receiving needed support as they work with the criminal justice system to assist in the investigation and prosecution of trafficking crimes. In all instances, activities must be designed to supplement, rather than supplant, the existing array of refugee services available in the community.

An applicant should provide anecdotal evidence that there have been victims of a severe form of trafficking within their community and/or a reasonable assumption that there may be additional unidentified victims in that community.

This grant program is intended to support services that address the special conditions of victims of a severe form of trafficking. ORR's expectation is that victims of trafficking will most likely, after a brief period of time, access mainstream services. Therefore, grantees should view these resources as a temporary solution.

According to post award requirements, grantees are expected to file periodic program reports. In the last two Program Performance Reports, grantees will discuss the transition of services indicating whether the services are now supported by the State, other public or private resources, or are no longer needed. These reports must provide supporting information on the impact of the services provided to the target population.

Allowable Activities

Local/Community Outreach

Allowable activities for local/community outreach include hosting community forums (including coordination and facilitation of outreach events) to raise general awareness about the problem of trafficking in their local community. In addition, applicants should emphasize the development of advertising and marketing anti-trafficking materials that reflect the broad scope of the various forms of trafficking (including debt bondage, peonage, forced labor and forced prostitution) and that are linguistically and culturally accessible, appropriate, and sensitive.

Applications focusing on Local/Community Outreach should indicate approximate timelines for development, dissemination, and review of actions presented to measure the effectiveness of the communication.

Services to Victims of a Severe Form of Trafficking

Allowable activities for Services to Victims of a Severe Form of Trafficking are restricted solely to individuals who are the recipients of a certification (for adults) or eligibility (for minors) letter from HHS. Some of the services needed for victims of a severe form of trafficking might include:

- Special medical care that is not otherwise available to the individual;
- Assistance with temporary transportation needs;
- Temporary housing;
- Temporary housing for young adults with limited experience living in families;
- Independent living skills and cultural orientation;
- Access to appropriate educational programs;
- Legal assistance/referrals and administrative costs (excluding T-visa application fees and/or attorney fees).
- Case management, to include information and referral to needed services in the community, either funded refugee services or mainstream services as appropriate;
- Special mental health services, such as trauma counseling, and
- Other services needed to bridge the time between the certification or eligibility date indicated directly on the Department's letter, and the receipt of public benefits and support services.

Applicants focusing on Services to Victims of a Severe Form of Trafficking should indicate how they will ensure that services are appropriate and accessible both linguistically and culturally.

Non-Allowable Activities

Funds will not be awarded to applicants for the purpose of engaging in activities of a distinctly political nature, activities designed exclusively to promote the preservation of a specific cultural heritage, or activities with an international objective (i.e., activities related to events in the refugees' country of origin).

Review Criteria

1. *Objectives and Need—Local/Community Outreach*—The applicant demonstrates a clear understanding of the population to be served. The conditions in proposed communities are clearly described, including the reasonable expectation of identifying trafficking victims within the community. The need for additional information leading to enhanced acknowledgment of trafficking is documented. The applicant provides anecdotal evidence that there are enough people and/or organizations that would benefit from this type of outreach/educational opportunity. *Services for Victims of a Severe Form of Trafficking*—The applicant demonstrates a clear understanding of the population to be served. The number of projected victims of trafficking to be served is reasonable in light of the organization's capacity. The application proposes to address a program of services for victims of trafficking. (25 points)

2. *Results or Benefits Expected*—The applicant clearly describes the results

and benefits to be achieved. The application clearly describes how the specific target population will benefit from proposed services, e.g., enhanced case management, special medical care, referrals and follow-up with culturally and linguistically appropriate mainstream providers. Results or benefits are described also in terms of the opportunities provided for victims, benefit-providing agencies, and law enforcement. The application describes how the impact of the funds will be measured on key indicators associated with the purpose of the project. Proposed outcomes are measurable and achievable within the grant project period, and the proposed monitoring and information collection is adequately planned. (25 points)

3. *Approach*—The strategy and plan, including a description of each proposed community and an assessment of appropriateness of activities, are likely to achieve proposed results. The proposed activities and timeframes are reasonable and feasible. The plan describes in detail how the proposed activities will be accomplished as well as the potential for the project to generate additional interest in outreach to victim populations and coordination with other services. The application includes a clear and comprehensive description of the communities proposed and how they will be impacted by this project. Assurance is provided that proposed services will be delivered in a manner that is linguistically and culturally appropriate to the target population. The applicant has described the planning consultation efforts undertaken. Where coalition partners are proposed, the applicant describes each partner agency's respective role and financial responsibilities and describes how the coalition will enhance the accomplishment of the project goals. Evidence of commitment of coalition partners in implementing the activities is demonstrated, i.e., by Memoranda of Understanding (MOUs) among participants. Assurance is provided that proposed services will be delivered in a manner that is linguistically and culturally appropriate to the target population. (25 points)

4. *Organizational Profiles*—The administrative and management features of the project, including a plan for fiscal and programmatic management of each activity and planning activities, are described in detail with proposed start-up times, ongoing timelines, major milestones or benchmarks, a component/project organization chart, management of affiliates, and a staffing chart of affiliate network. The qualifications of project staff, both applicant and affiliate agencies, as well as any volunteers, are documented. The applicant has provided a copy of its most recent audit report. (10 points)

5. *Budget and Budget Justification*—The budget and narrative justification are reasonable, clearly presented, and cost-effective in relation to the proposed activities and anticipated results. The applicant clearly indicates how awarded funds will complement other community outreach efforts and/or social services to achieve the objectives. Planning for continuation of services beyond the project period is realistic. (15 points)

Category 2—Technical Assistance and Training

Purpose and Objectives

This program is to provide technical and issue-specific assistance and training to organized groups, organizations, and individuals regarding the background and impact of the TVPA, with specific emphasis on the provision of benefits as it relates to the needs of trafficking victims. The program is also aimed at providing and disseminating research and resources for benefit-issuing agencies, law enforcement agencies, and others relating to issues of trafficking in persons.

We believe that strong technical assistance for the provision of benefits is needed by organizations and individuals that have limited experience working with victims of a severe form of trafficking. Victims of a severe form of trafficking have distinct and acute needs for assistance that may differ from the needs of other refugees. Programs targeted at domestic victims of crime are not necessarily prepared to address the specific needs of trafficking victims (e.g., culturally appropriate and sensitive trauma counseling, language translation, legal and immigration process referrals). Likewise, many refugee benefit-issuing organizations do not have experience in identifying the needs of a trafficking victim as distinct from the needs of other refugee populations.

The target audience requires guidance on: The types of benefits and services available to victims; barriers to victims receiving benefits; successful methodologies to ensure that victims access benefits and services available to them; and how to provide case assessments (needs assessments) of victims, including how to conduct clinical assessments.

Organizations and individuals also need to learn more about the TVPA including the legislative background, programmatic impact, technical details of the Act, and the processes that enable victims to receive certain types of benefits. Additional background regarding the history of trafficking prior to the TVPA, including precipitating factors to the enactment of the law, will also provide a better understanding of the potential impact of the TVPA for both victims and service providers.

To ensure that service organizations, law enforcement agencies and others have all the necessary information that enables them to provide assistance to victims, the development of research and background materials is critical. As resources and information continue to be developed, these resources need to be disseminated to ensure that the growing base of knowledge can be used to create effective and lasting programmatic advances for victim assistance.

We expect that applicants to this program category will have strong knowledge of and demonstrate significant experience working with victims of a severe form of trafficking in areas including direct services, legal assistance referrals, and case management.

Allowable Activities

ORR will accept applications under this announcement for projects that propose services that enhance the knowledge base and service ability of other potential grantees, current grantees, law enforcement agencies, benefit-issuing agencies and other concerned populations who are working with or may be working with victims of a severe form of trafficking.

Specific activities may include:

- *Educational outreach.* Serving as a consulting partner to other ORR trafficking grantees. Providing technical guidance to other agencies regarding benefits and services available to victims of a severe form of trafficking and the travel associated with this activity.
- *Meetings and conferences.* Hosting educational events to disseminate information on victim services and methodologies. Participation in national or international meetings and conferences that may contribute to capacity development and knowledge base on trafficking, and otherwise enhance collaborative activities.

(Note—all international travel must be approved in advance by ORR project officer.)

- *Clearing house of information.* Development of a library of resources to be made available to other organizations and individuals. Development of an internet web site which could include

chat, resources, links, or community bulletin boards. Providing and facilitating information exchange among various contributors.

• *Consultation/mentoring services.* Providing specific issue guidance/advice to other agencies working on anti-trafficking initiatives.

• *Curriculum development and dissemination.* Development of written protocols for handling trafficking cases and directing victims to available benefits.

Acceptable applications will include the development of curricula that can be disseminated to other organizations. Curricula should follow the above objectives and address the provision of benefits, methodologies for successful implementation, as well as follow-up resource development. Included in the development process should be allowances for training other organizations on the curricula and follow-up as needed.

Non-Allowable Activities

Funds will not be awarded to applicants for the purpose of engaging in activities of a distinctly political nature, activities designed exclusively to promote the preservation of a specific cultural heritage, or activities with an international objective (i.e., activities related to events in the trafficking victims' country of origin).

Review Criteria

1. *Objectives and Need*—The applicant demonstrates a clear understanding of the population to be served through significant/extensive experience working with victims of a severe form of trafficking. The applicant demonstrates clear training and advocacy experience through quantitatively demonstrated experience with trafficking victims of various cultural, linguistic, and experiential background. The applicant has experience with case assessment and creating links to law enforcement agencies, benefit issuing agencies, non-profit organizations and others. The application proposes to address a program of services for victims of trafficking. (25 points)

2. *Results or Benefits Expected*—The application clearly describes how the specific target population will benefit from proposed services, *e.g.,* enhanced case management ability, increased capacity to create referrals, and follow-up with culturally and linguistically appropriate mainstream providers. Any curricula developed can be used as key resource to be shared throughout the country and provided in conjunction with at least three (3) training sessions within the first year of the grant. Proposed quantitative outcomes are tangible and achievable within the grant project period and the proposed monitoring and information collection are adequately planned. (25 points)

3. *Approach*—The strategy and plan are likely to achieve the proposed results; the proposed activities and timeframes are reasonable and feasible. The plan describes in detail how the proposed activities will be accomplished as well as the coordination with any other services. Assurance is provided that proposed services will be delivered in a manner that is linguistically and culturally appropriate to the target population. Where coalition partners are proposed, the applicant describes each partner agency's respective role and financial responsibilities; and describes how the coalition will enhance the accomplishment of the project goals. The applicant has described the planning consultation efforts undertaken. Evidence of commitment of coalition partners in implementing the activities is demonstrated, *i.e.,* by Memoranda of Understanding (MOUs) among participants. (25 points)

4. *Organizational Profiles*—Individual organization staff including volunteers are well qualified. The administrative and management features of the project, including a plan for fiscal and programmatic management of each activity, are described in detail with proposed start-up times, ongoing timelines, major milestones or benchmarks, a component/project organization chart, and a staffing chart. The applicant has provided a copy of its most recent audit report. (15 points)

5. *Budget and Budget Justification*—The budget and narrative justification are reasonable, clearly presented, and cost-effective in relation to the proposed activities and anticipated results. Planning for any costs for publication, printing, dissemination, and similar costs are reasonable and comprehensive. (10 points)

Category 3—Information Discovery for National Outreach/Educational Campaign

Purpose and Objectives

The purposes of this project are: (A) To determine the extent of community awareness regarding the problem of human trafficking among both the general United States population and the organizations that serve victims; and (B) to better understand the successful approaches that might encourage victims to come forward for identification and assistance. The resultant information will be used as the basis for an array of culturally appropriate Public Service Announcements (PSAs) designed to increase the number of victims identified and encourage the development and implementation of additional programs intended to protect and care for victims of severe forms of trafficking.

There is a critical need for information discovery regarding public awareness of trafficking, of provisions of the Trafficking Victims Protection Act of 2000 (TVPA), and identification of factors that encourage victims to come forward to access protection and services. Given the relatively recent passage of this legislation and the TVPA's impact upon the welfare of trafficking victims, ORR believes it is important for this information to be gathered and analyzed without delay in order to identify and assist additional victims.

In comparison to other immigrant populations (*i.e.,* refugees or asylees) trafficking victims are a population about whom relatively little is known. Due to the nascent nature of the TVPA, there is a relatively small number of victims who have been made eligible to receive certain federal or state funded or administered benefits. While there is a growing amount of anecdotal evidence about the needs of trafficking victims and their access to benefits, this evidence may not accurately reflect the range of victim needs. For example, trafficking victims may require immediate, secure, and confidential contact with law enforcement agencies while other immigrant populations may not. We need more information to fully estimate the level of public awareness of trafficking and the factors that may encourage victims to come forward to utilize available benefits and services.

It is also important to describe how victims interact with community organizations and service providers. Many of these organizations currently play a vital role in identifying and providing support to trafficking victims and may be called upon for additional support. For example, organizations that are the front line service providers at hospitals, clinics, or domestic violence shelters may not realize that many of the people they have assisted are actually trafficking victims. Similarly, community organizations (e.g., mutual assistance associations) and religious institutions can play an important role in the lives of trafficking victims. This project will seek to improve our understanding of those roles and how they are affected by the TVPA.

Allowable Activities

Grantee Responsibilities

1. The Grantee should propose a project work plan that describes conditions within the topic areas underlined below. The project should explore the knowledge and relationships among trafficking victims (including child and elderly victims), service providers, and community organizations within each topic. Questions listed next to each topic suggest the type of information in which ORR has particular interest.

• *Trafficking Awareness.* What level of awareness does the general community exhibit? How are communities and individual community members currently being educated about the existence of trafficking? How are trafficking victims being educated about the crime of human trafficking? What information has been disseminated? What have community members identified as areas in need of increased knowledge or awareness? What are the successful approaches to encouraging victims to come forward?

• *Victim Identification.* Who are the first to come into contact with victims? How are victims identified as victims (*e.g.,* victim determination) and who does this? How much information do these organizations/groups have regarding the TVPA? What connection, if any, do they have with other providers?

• *Victim Assistance.* To what extent is the community aware of assistance that may be made available to victims? How are services being directed to victims? What actions have been taken or are planned to expand these services? What is the demand for community-based assistance (including food, medical, and mental health services)? To what sources do victims turn in order to meet their needs?

• *Employment.* What type of employment do victims pursue following their emancipation? How long do they stay in their jobs? What level of wages do victims receive and how much do they receive in total earnings? What fringe benefits do victims receive from their employers? What are the child care arrangements for employed trafficking victims?

• *Victims' Income.* What are victims' sources of income following their emancipation and how much do they receive from each source? What is the ratio of assistance to total income? What types of assistance and services are received and from whom (e.g., public or private service providers, friends, family)?

• *Role of Community Organizations.* What role(s) do community organizations have in identifying trafficking victims? What type (e.g., housing, security, medical, clothing, etc.) and how much assistance do trafficking victims receive from those community organizations, including religious institutions? How have these organizations helped victims access public benefits to which victims may be eligible under the TVPA?

Special consideration will be given to applications that demonstrate a concerted effort to examine organizations and individuals who are reaching out to victims of severe forms of trafficking and pursuing actions that encourage victims to come forward. Applicants should focus on at least two communities with high densities of trafficking victims.

The applicant's proposal should also seek to answer the relevant questions above from the standpoint of victims, service providers, and community organizations. The methodology for accomplishing this approach is at the discretion of the grantee; however, many organizations that initially come into contact with victims may be excellent sources of information. These could include, but are not limited to, hospitals, clinics, police and other law enforcement agencies, immigrant-serving community-based organizations, social service providers, child care facilities, and public health authorities. Information from these organizations should describe the relationship between trafficking victims and the community, the types of support community organizations provide to immigrant families, and, to the extent possible, any outreach efforts being undertaken.

2. Category three of this announcement is the only category that will be a cooperative agreement. In the spirit of the cooperative agreement, the Grantee should provide monthly updates to inform the Federal Project Officer of research developments and the status of project activities.

3. With input from the Federal Project Officer, the Grantee should select an Advisory Panel to provide guidance in project development. The Advisory Panel may participate in subsequent meetings between the Federal Project Officer and the Grantee. The Grantee may be responsible for the Advisory Panel's travel and related expenses, if any.

4. Prior to completion of the work plan (analysis plan), the Grantee should meet with relevant Federal personnel in Washington, DC to discuss the preliminary methodology and design of the research project including what research questions will be answered and what methodology the Grantee will employ to answer the questions. Federal personnel will have the opportunity to provide input and suggestions in these areas. If applicable, the Federal Project Officer should be invited to participate in other meetings in which the Grantee is involved during discussions regarding critical aspects of the project with other funding sources.

5. After consultation, the Grantee should submit a final work plan that is based on any updates to the work plan submitted in the original application. The plan should:

(a) Include a complete list of research questions the project will answer and the variables that will be used to answer each question. These variables could include (but are not limited to) immigration status and demographic information for all victims, including income level and source; type of victimization; benefit eligibility and history, employment history; and health status.

(b) Identify and describe the methodology used to gather information on trafficking with respect to these variables and the analysis to be performed.

(c) Identify how the proposed variables and data sets will be used by the Grantee to answer the research questions described in the work plan.

(d) Identify important questions/issues for which data currently are not available, and strategies for dealing with this lack of data when it pertains to the research questions in the work plan.

(e) Identify how the confidentiality will be protected of any research subjects involved in the project.

(f) Describe the results that will be produced and construct examples of tables illustrating how these results will be presented.

(g) Identify steps to coordinate with any federal or contractor staff assigned responsibility for designing and implementing the national outreach/educational campaign.

6. Once initial analyses have been conducted, the Grantee should meet with relevant federal personnel in Washington, DC to discuss preliminary findings and the format for the final report. In the spirit of a cooperative agreement, the Grantee should work with federal personnel to determine the need for additional collection or analysis of information.

7. After completing their analysis, the Grantee will prepare a final report describing the procedures used to gather information and conduct the analysis, barriers encountered in completing the

project and the results of their analysis. A draft of this report should be delivered to the Federal Project Officer before the completion of the project. The Federal Project Officer will return comments on the draft report to the Grantee and a final report that reflects the comments of the Federal Project Officer should be delivered to the Grants Officer before the completion of the project. The report should be provided to the Grants Officer both in hard copy and on 3.5″ floppy disk in a format that is agreed upon by both parties.

8. Following the completion of the final report, the Grantee should conduct a briefing in Washington, DC for federal personnel regarding the results of the analyses. The Grantee should be responsible for assembling and copying any necessary briefing materials. The briefing should take place before the completion of the project.

9. The Grantee will make data and analysis completed as a result of this project available to the research community and the government.

ORR Responsibilities

ORR will:

1. Provide input into the final work plan, including methodology, analysis, and dissemination plan.

2. Provide consultation and technical assistance in planning and operating program activities.

3. Work with the Grantee to resolve any methodological or analytical issues.

4. Assist in the transfer of information to appropriate federal, state and local entities, including any PSA developer(s).

5. Review Grantee activities and provide feedback to ensure that objectives and award conditions are being met. ORR retains the right to withhold future year funding if technical performance requirements are not met.

Non-Allowable Activities

Funds will not be awarded to applicants for the purpose of engaging in activities of a distinctly political nature, activities designed exclusively to promote the preservation of a specific cultural heritage, or activities with an international objective (i.e., activities related to events in the refugees' country of origin).

Review Criteria

1. *Objectives and Need for Assistance*—The objectives and anticipated results of the proposed project will advance policy knowledge and development. The proposed research questions address the required topics listed in this announcement and answers to these questions will effectively describe the status of trafficking victims, their communities and the organizations that serve them. The applicant demonstrates a clear understanding of the populations to be researched through significant/extensive knowledge of the issues of severe forms of trafficking in persons and the effect upon victims. The applicant demonstrates clear research experience through quantitatively demonstrated experience with trafficking victims of various cultural, linguistic, and experiential backgrounds. The applicant has experience with creating links to law enforcement agencies, benefit issuing agencies, non-profit organizations and others. The application proposes to develop information to be used to design and execute a national outreach and educational program with the goal of increasing public awareness about human trafficking. (25 points)

2. *Results or Benefits Expected*—Information and data are developed and provided that will allow PSA creator(s) to choose and target specific geographic media markets on the problem of human trafficking. (25 points)

3. *Approach*—Information gathering supplements (rather than duplicates) studies already underway by the federal government, including research on current and/or effective public awareness strategies for victims of trafficking. Methodology is appropriate, sound, and cost-effective, including the research design, statistical techniques, analytical strategies, selection of existing data sets, and other procedures. Sites selected for the study have a concentration of previously identified trafficking victims, diverse demographic victim populations (i.e. country of origin, types of identified trafficking crimes—sexual exploitation, involuntary domestic servitude, forced labor, etc.), and diverse levels of local service provision.

The proposed methodology accurately describes victims' status as suggested by the topics listed in this announcement, as well as the interaction between victims, their communities and service providers. To the extent that projects seek to examine the impact of the TVPA, the applicant's proposed methodology reliably attributes impacts. (20 points)

4. *Organizational Profiles*—Project personnel are well qualified to conduct the proposed research, as evidenced by their professional training and experience. The capacity of the organization to provide the infrastructure and support necessary for the project is suitable. The applicant has experience coordinating and sequencing tasks with other organizations. Special consideration will be given to applicants that collaborate with organizations that frequently work with immigrant populations. The applicant has pledged and shown ability to work in collaboration with other organizations in search of similar goals. The applicant has demonstrated capacity to work with a range of government agencies. The administrative and management features of the project, including a plan for fiscal and programmatic management of each activity, are described in detail with proposed start-up times, ongoing timelines, major milestones or benchmarks, a component/project organization chart, and a staffing chart. The applicant has provided a copy of its most recent audit report. (20 points)

5. *Budget and Budget Justification*—The budget and narrative justification are reasonable, clearly presented, and cost-effective in relation to the proposed activities and anticipated results. Planning for any costs for information research, dissemination, and similar costs (e.g., travel) are reasonable and comprehensive. Applications should include separate estimates for each of the three years, if funding levels are expected to be substantially different in subsequent years. (10 points)

Part II: The Review Process

Intergovernmental Review—This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed federal assistance under covered programs.

• All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau have elected to participate in the Executive Order process. Applicants from these twenty-seven jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Applicants should contact their Single-Points-of-Contact (SPOC) as soon as possible to alert them of the

prospective applications and receive any necessary instructions. Applicants from participating jurisdictions must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (the date of contact) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Grants Management Officer, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade SW., 4th floor, Washington DC 20447.

A list of the Single Points of Contact for each participating State and Territory can be found on the web at: *http://www.whitehouse.gov/omb/index.html.*

Initial ACF Screening—Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date of July 31, 2002 and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding.

Competitive Review and Evaluation Criteria—Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of evaluation criteria specified in Part I. The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications that are responsive to the evaluation criteria within the context of this program announcement.

Applications received for each Category will be scored and ranked only within the Category designated on the SF 424, e.g. in one of the three program areas.

Part III: The Application

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ACF. Selected elements of the ACF Uniform Project Description (UPD) relevant to this program announcement are attached as Appendix A.

Application Forms—Applicants requesting financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF 424A, Budget Information—Non-construction Programs; SF 424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Application materials including forms and instructions are also available from the Contact named in the preamble of this announcement.

Application Submission and Deadlines—An application with an original signature and two clearly identified copies are required. Applicants must clearly indicate on the SF 424 the Category under which the application is submitted.

The closing date for receipt of applications is (4:30 p.m. Eastern Time Zone) July 31, 2002. Please note that all applications must be received in ORR (as opposed to postmarked) by the closing date. Mailed and hand-carried applications received after the 4:30 p.m. (Eastern Time Zone) deadline on the closing date will be classified as late.

Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline time and date at the: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, Attention: Grants Management Officer, 370 L'Enfant Promenade SW., 4th Floor, Washington, DC 20447. Applicants are responsible for mailing applications well in advance to ensure that applications are received on or before the deadline time and date.

Applications hand-carried by applicants, applicant couriers, overnight/express mail couriers, or by other representatives on behalf of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, Attention: Grants Management Officer, 4h Floor, Aerospace Building, 901 D Street, SW., Washington, DC 20447 between Monday and Friday (excluding federal holidays). The address must appear on the envelope/package containing the application with the note ''Attention: Grants Management Officer.'' (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

The federal government has experienced periodic delays in mail delivery through the U.S. Postal Service since fall 2001. In some instances, mail has been delayed up to or over four months. To ensure that ACF receives your application by the (4:30 p.m. Eastern Time Zone) July 31, 2002 deadline, you may wish to send your application via an express mailing service. Also, please send an electronic notification that you have sent an application to Jay Womack at *jwomack@acf.hhs.gov* and Neil Kromash at *nkromash@acf.hhs.gov.*

Late applications: Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (e.g. floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

For Further Information on Application Deadlines Contact: Grants Management Officer, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 4th Floor, Washington, DC 20447, Telephone: (202) 401–4577.

Certifications, Assurances, And Disclosure Required For Non-Construction Programs—Applicants must sign and return the disclosure form, if applicable, with their applications. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a signed certification regarding lobbying with their applications, when applying for an

award in excess of $100,000. Applicants who have used non-federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying.

Applicants must make the appropriate certification of their compliance with the Drug Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications.

General Instructions for Preparing a FulL Project Description

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested. Please refer to the UPD sections in the appendix.

Length of Applications—Each application narrative should not exceed 20 pages in a 12-pitch font. Attachments and appendices should not exceed 25 pages and should be used only to provide supporting documentation such as administration charts, position descriptions, resumes, and letters of intent or partnership agreements. A table of contents and an executive summary should be included but will not count in the page limitations. Each page should be numbered sequentially, including the attachments and appendices. This limitation of 20 pages per category should be considered as a maximum, and not necessarily a goal. Application forms are not to be counted in the page limit.

Please do not include books or videotapes as they are not easily reproduced and are, therefore, inaccessible to the reviewers.

Part IV: Post-Award

Applicable Regulations—Applicable DHHS regulations can be found in 45 CFR part 74 or 92.

Treatment of Program Income—Program income from activities funded under this program may be retained by the recipient and added to the funds committed to the project, and used to further program objectives.

Reporting Requirements—Grantees are required to file the Financial Status Report (SF–269) semi-annually and the Program Performance Reports quarterly, along with the Schedule C of the ORR Quarterly Performance Report. Category Three grantees should note the additional requirements for the final report noted under Category Three Grantee Responsibilities above.

Funds awarded must be accounted for, and reported under, the distinct grant number ascribed. Although ORR does not expect the proposed projects to include evaluation activities, it does expect grantees to maintain adequate records to track and report on project outcomes and expenditures. The official receipt point for all reports and correspondence is the Grants Management Officer, Administration for Children and Families/Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade SW., 4th Floor, Washington, DC 20447, Telephone: (202) 401–4577. An original and one copy of each report shall be submitted within 30 days of the end of each reporting period directly to the Office of Grants Management.

A Final Financial and Program Report shall be due 90 days after the project expiration date or termination of federal budget support.

Dated: May 13, 2002.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

Appendix A—Uniform Project Description OMB No. 0970–0139

The project description is approved under OMB control number 0970–0139 which expires 12/31/03.

Part I: The Project Description Overview

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.

Pages should be numbered and a table of contents should be included for easy reference.

Part II: General Instructions for Preparing a Full Project Description

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all

functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Third-Party Agreements

Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application *OR* by application deadline.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: First column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) currently set at $100,000. Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may

include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgment that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application that contain this information.

Nonfederal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Total Direct Charges, Total Indirect Charges, Total Project Costs

[Self-explanatory]

[FR Doc. 02–13089 Filed 5–23–02; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Refugee Microenterprise Development Program

AGENCY: Office of Refugee Resettlement (ORR), ACF, DHHS.

ACTION: Notice of availability of FY 2002 social services discretionary funds for refugee microenterprise development projects.

SUMMARY: The Office of Refugee Resettlement (ORR) invites eligible entities to submit competitive grant applications for microenterprise development projects for refugees.[1] Applications will be accepted pursuant to the Director's discretionary authority under section 412(c) of the Immigration and Nationality Act (INA) (8 U.S.C. 1522), as amended. Applications will be screened and evaluated as indicated in this program announcement. Awards will be contingent on the outcome of the competition and the availability of funds.

DATES: The closing date for submission of applications is July 8, 2002. *See* Part IV of this announcement for more information on submitting applications.

Announcement Availability: The program announcement and the application materials are available on the ORR website at *www.acf.dhhs.gov/programs/orr.*

FOR FURTHER INFORMATION CONTACT: Henley Portner, Division of Community Resettlement, Office of Refugee Resettlement, Administration for Children and Families, at (202) 401–5363 or *HPortner@ACF.DHHS.GOV.*

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: Background, legislative authority, funding availability, CFDA Number, applicant eligibility, project and budget periods, program purpose and scope, client eligibility, allowable activities, and treatment of program income.

Part II: General instructions for preparing a full project description.

Part III: The Review Process—Intergovernmental review, initial ACF screening, competitive review, and review criteria.

Part IV: The Application—Application materials, application submission information, regulations, and reporting.

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting burden for this collection of information is estimated to average 25 hours, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The following information collections are included in the program announcement: OMB Approval No. 0970–0139, ACF Uniform Project Description (UPD) which expires 12/31/2003. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part I: Background

The Office of Refugee Resettlement (ORR) has supported the field of microenterprise development since 1991 with discretionary grants to various State governments, community economic development agencies, community action and other human service agencies, local mutual assistance associations, and voluntary agencies. Organizations with successful programs have typically been those with a long-term commitment to microenterprise and to its adaptation to the refugee experience. They have committed agency resources to support refugee programs; and their work in refugee microenterprise has been consistent with the overall agency mission. A public or private non-profit agency interested in receiving funding under this announcement must analyze its organizational capacity to work with refugees who are economically poor, who have limited English language proficiency, and who have neither assets nor American business experience. Many newly arrived refugees do not qualify for commercial loans or for admission into mainstream microenterprise development programs for these reasons.

Refugees bring positive attributes to microenterprise development projects, including a diverse and rich array of business ideas, skills, experiences, and ambitions. These characteristics have been largely responsible for the success

[1] In addition to persons who meet all requirements of 45 CFR 400.43, eligibility for refugee social services also includes: (1) Cuban and Haitian entrants under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, as included in FY 1988 Continuing Resolution (Pub. L. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1989 (Pub. L. 10–461), 1990 (Pub. L. 101–167), and 1991 (Pub. L. 101–513). For convenience, the term ''refugee'' is used in this notice to encompass all such eligible persons.

of the ORR initiative. During the last ten years, refugees have started or expanded over 800 micro-businesses; and over 89 percent of these businesses have survived. ORR grantees have provided over $3 million in financing to these entrepreneurs; and the loan repayment rate is close to 100 percent. By commonly accepted measures of performance (business survival rates, loan default rates, etc.), the ORR-funded programs have excelled and frequently led the field in achievement. More important, over 4,000 refugees have gained new entrepreneurial skills and knowledge; and the additional business income is helping refugee families to achieve economic self-sufficiency.

Building on the experience of the last ten years, ORR seeks in this announcement to continue support to this field, particularly on behalf of those refugees who, because of language and cultural barriers, are unlikely to gain access to commercial loans or business training through other programs. To be successful in this competition, refugee-serving organizations must demonstrate their agency's capacity to provide the technical expertise to help refugees start or expand businesses. Economic development agencies must show how they will modify their existing programs to serve refugees effectively.

Legislative Authority: Section 412(c)(1)(A) of the Immigration and Nationality Act (INA)(8 U.S.C. 1522(c)(1)(A)) authorizes the Director ''to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—(i) to assist refugees in obtaining the skills which are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional refresher training, and other recertification services; (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services.''

Funding Availability: ORR expects to make available approximately $2.5 million for Microenterprise Development projects for about 12 to 20 awards in amounts ranging from $100,000–$200,000.

The Director reserves the right to award less, or more, than the funds described, in the absence of worthy applications, or under such other circumstances as may be deemed to be in the best interest of the government. Applicants may be required to reduce the scope of projects based on the amount of the approved grant award.

CFDA Number: The Catalog of Federal Domestic Assistance number for this program is 93.576. The title of the program is the Refugee Microenterprise Development Program.

Applicant Eligibility: Eligible applicants are public and private non-profit organizations and agencies of State governments that are responsible for the refugee program under 45 CFR 400.5. Faith-based organizations are eligible to apply for these grants.

Project and Budget Periods: This announcement invites applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the three-year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Government.

Refugee Microenterprise Development Program Purpose and Scope: The purpose of microenterprise development is to assist refugees in becoming economically self-sufficient and to help refugee communities in developing employment and capital resources.

Applicants may request funds for microenterprise development projects to include business technical assistance or short-term training, credit in the form of microloans, the administrative costs of managing the project, and, if applicable, a revolving microloan fund. Projects should be designed in a manner that is culturally and linguistically appropriate for the refugee population.

Projects should be designed to be appropriate for the characteristics of the local refugee populations, including characteristics such as employment rates, welfare status, length of time in the U.S., interest in micro-businesses, and English language proficiency. Applicants should also be familiar with the capital needs and capital market gaps for refugee entrepreneurs and should demonstrate how refugees will gain access to business credit.

Successful applicants will demonstrate an understanding of the economic opportunities in the community for refugees and will have established working partnerships with the communities' refugee resettlement services network, with existing microenterprise organizations (where they are present), and with financial institutions.

ORR will not fund applicants who propose to subgrant or contract all or most of the proposed activities under this initiative to an unrelated entity. This does not bar subgranting or contracting for specific services or activities.

Client Eligibility: Eligible clients are refugees who aspire to establish, expand, or stabilize a microenterprise but who lack the financial resources, credit history, or personal assets to qualify for business loans or assistance through commercial institutions. Refugees may participate regardless of their date of arrival in the U.S. Grantees will be responsible for documenting refugee client eligibility.

Allowable Activities: Project components may include one-on-one business consultation and training, training in classroom settings, access to business credit, individual or peer group lending, and follow-up technical assistance to refugee businesses. ORR funds may also be used for the administrative costs associated with a loan loss reserve fund or with managing a revolving loan fund.

Microloans consist of small amounts of credit that are less than $15,000 and are extended to low-income entrepreneurs for start-ups of microenterprises or for expansion or stabilization of existing microenterprises. Applicants may elect to establish cooperative relationships with one or more of the community's financial institutions to obtain access to commercial loan funds. Alternatively, ORR funds may be used for microloans to individual refugee entrepreneurs in sums not to exceed $15,000 (of ORR monies). These funds may be disbursed through individual loans or through peer lending mechanisms, through a revolving loan fund. Requests for ORR grant funds for a revolving loan fund may not exceed $50,000 in the first budget period. Grantees will be responsible for establishing written lending policies and procedures and for collecting and servicing loan repayments.

ORR supports the use of commercial lending institutions for refugee borrowers to leverage the limited amount of ORR funds available for this purpose and to provide borrowers with the opportunity to establish credit-worthy histories with traditional lenders. To that end, ORR does not encourage the use of below-market rates of interest for the loan funds. Conversely, grantees may not charge refugees interest rates that exceed four

percentage points above the New York prime lending rate at the time of loan approval.

Microloans will have a maximum maturity of three years. They may be used for working capital, inventory, supplies, furniture, fixtures, machinery, tools, equipment, building renovation, and/or leasehold improvements.

Microloan funds may not be used for the following types of businesses:

- As venture capital for established businesses that are attempting major expansion;
- For enterprises engaged in gambling or speculation;
- For any illegal activity or production or for the service or distribution of illegal products;
- For purposes not related to microenterprise development; e.g., for the purchase of a personal-use automobile.

Treatment of Program Income: Projects with revolving loan funds may earn and retain program income in the form of interest (on individual loans or from loan loss reserves). Specifically, program income funds may be retained by the project to expand the pool of credit in accordance with 45 CFR 74.24 (b)(1), (b)(2) and (e) for non-profit organizations and 45 CFR 92.25 (g)(2) for governmental entities. Similarly, repaid loan principal is to be treated as program income and placed in the revolving loan fund for re-lending. Program income may be retained by the grantee so long as the use of these funds furthers the objectives of the grant and is consistent with the Federal statute under which the grant was made.

Any fees or charges imposed on refugee clients by the grantee or its subcontractors or affiliates (e.g., loan processing or training fees) must be disclosed in the application and pre-approved by ORR.

Successful grantees will be expected to coordinate their policies and procedures for developing and administering refugee microenterprise projects with the existing refugee microenterprise services network. To ensure an exchange of technical and training information among programs, all grantees are encouraged to attend two ORR training meetings during each year of their participation in this program area. Grant funds may be used to offset the cost of attendance.

Part II: General Instructions for Preparing a Full Project Description

The Project Description Overview

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Cross-referencing should be used rather than repetition. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, ORR is particularly interested in the number of businesses established, expanded, or stabilized; the employment generated by the businesses; the number and size of loans provided to refugees; the amount of additional funds leveraged by the ORR funds for microenterprise loans, and the impact of the businesses assisted on the refugees' movement toward self-sufficiency.

Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

Additional Information

Following are requests for additional information that need to be included in the application:

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports, or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses, and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Third-Party Agreements

Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding. All submissions should be included in the application OR by application deadline.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, ''Federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those that belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open, and free competition. Recipients and subrecipients, other than States that are required to use part 92 procedures, must justify any anticipated procurement

action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description, and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source, and anticipated use of program income in the budget or refer to the pages in the application that contain this information.

Nonfederal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Total Direct Charges, Total Indirect Charges, Total Project Costs

Part III: The Review Process

Intergovernmental Review

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

The following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions need take no action in regard to E.O. 12372: Alabama, Alaska, American Samoa, Colorado, Connecticut, Kansas, Hawaii, Idaho, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility criteria of the program may still apply for a grant even if a State, Territory, Commonwealth, etc., does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations, which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Attention: Daphne Weeden, Grants Officer, 370 L'Enfant Promenade, SW., Fourth Floor West, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this program announcement.

Initial ACF Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was mailed by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding.

Competitive Review

Applications, which pass the initial ACF screening, will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The evaluation criteria were designed to assess the quality of a proposed project and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications that are responsive to the evaluation criteria within the context of this program announcement.

Review Criteria

Applications will be reviewed using the following evaluation criteria:

1. *Objectives and Need for Assistance.* Quality of the description of the prospective refugee communities' profile with respect to welfare utilization, English language proficiency, length of time in the U.S.,

interest in microbusiness, and the description of local capital needs and capital market gaps for refugee microentrepreneurs. (15 points).

2. *Approach.* Adequacy and appropriateness of the program approach or design, including project goals and structure (policies, procedures, activities); training and technical assistance; loan funds, lending criteria, and fees, if included in the design; whether the business targets are start-ups, expansions, or both; partner agencies; and credit enhancements, such as loan loss reserves. (30 points).

3. *Organization Profiles.* Demonstrated organizational and management capacity including bilingual/bicultural competent services and experience serving refugees and other economically disadvantaged populations; description of experience in organizational management, including copies of the last two fiscal year financial statements, with balance sheets and income statements; description of experience in management of loan funds, including a projected monthly cash flow chart for the loan fund for the three-year period beginning October 1, 2002; and experience in collaboration with the specific refugee community(ies) and coalition building among refugee and non-refugee service providers. (20 points).

4. *Results and Expected Benefits.* Extent to which the expected outcomes and unit costs of the project are appropriate, consistent with reported nationwide performance in microenterprise projects, and reasonable in relation to the proposed activities. Results may include the impact of loan funds, business income, and business assets on clients' welfare status, if applicable, as well as projected outcomes for business income, employment, and survivability. (20 points).

5. *Budget and Budget Justification.* Appropriateness and reasonableness of the proposed budget, including the relative distribution of funds for administrative costs, training or technical assistance, and loan capital. The application should include project timelines and a narrative justification supporting each budget line item. (15 points).

Part IV: The Application

Application Materials: In order to be considered for a grant under this program announcement, an application must be submitted on the Standard Form 424 and in the manner prescribed by ACF. Application materials including forms and instructions are available from the ORR website at *www.acf.dhhs.gov/programs/orr/funding.* Application materials including forms and instructions are available from the contact named under the **FOR FURTHER INFORMATION CONTACT** section in the preamble of this announcement.

Application Submission Information

1. Mailed applications postmarked after the closing date will be classified as late.

2. *Deadline.* Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Attention: Daphne Weeden, Grants Officer, 370 L'Enfant Promenade, SW., Washington, DC 20447. Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine-produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.) Applications handcarried by applicants, by applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, ACF Mailroom, Second Floor (near loading dock), Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note ''Attention: Daphne Weeden, Grants Officer.'' ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

3. *Late applications.* Applications that do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

4. *Extension of deadlines.* ACF may extend an application deadline when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there is widespread disruption of the mail service, or in other rare cases. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

Regulations: Applicable U.S. Department of Health and Human Services regulations can be found at 45 CFR part 74 or part 92.

Reporting: Grantees are required to file the Financial Status Report (SF–269) and Program Performance Reports on a semi-annual basis. Funds issued under these awards must be accounted for, and reported upon, separately from all other grant activities. Although ORR does not expect the proposed projects to include evaluation activities, it does expect grantees to maintain adequate records to track and report on project outcomes. The official receipt point for all reports and correspondence is Ms. Daphne Weeden, Grants Officer, Office of Grants Management, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th Floor West, Washington, DC 20447, Telephone: (202) 401–4577. An original and one copy of each report shall be submitted within 30 days of the end of each reporting period directly to the Grants Officer. The mailing address is: Ms. Daphne Weeden, Grants Officer, Office of Grants Management, Administration for Children and Families, 370 L'Enfant Promenade SW., 4th Floor West, Washington, DC 20447. A final Financial Status Report and Program Performance Report shall be due 90 days after the budget expiration date or termination of grant support.

Dated: May 9, 2002.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 02–13035 Filed 5–23–02; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2002 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 2002 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA), including Part I, *Targeted Capacity Expansion Initiatives for Substance Abuse Prevention (SAP) and HIV Prevention (HIVP) in Minority Communities: Planning Grants (SP 02–004),* and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements,* before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2002	Est. number of awards	Project period
Targeted Capacity Expansion Initiatives for Substance Abuse Prevention (SAP)and HIV Prevention (HIVP) in Minority Communities: Planning Grants.	July 24, 2002	$7,500,000	70–75	1 year.

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2002 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: http://www.samhsa.gov.

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: SAMHSA's Center for Substance Abuse Prevention (CSAP) announces that funding is available for Fiscal Year 2002 for Planning Grants through the Targeted Capacity Expansion Initiatives for Substance Abuse Prevention (SAP) and HIV Prevention (HIVP) in Minority Communities Program.

This program responds to the health emergency in African-American, Hispanic/Latino, American Indian/Alaska Native, and Asian-American/Pacific Islander communities described by the Congressional Black and Hispanic Caucuses. It includes two initiatives:

- Planning Grants
- Services Grants

Funds under this Planning Grant initiative are available to establish the infrastructure and leadership necessary to be able to provide effective Substance Abuse Prevention (SAP) and HIV Prevention (HIVP) and other related services to the minority communities they serve. Funds will also support efforts and activities that will build awareness and consensus, and develop action plans for services to help ensure access to effective SAP and HIVP interventions in their communities.

Eligibility: Funding will be directed to activities designed to deliver services specifically targeting racial and ethnic minority populations impacted by HIV/AIDS. Eligible entities may include: not for profit community-based organizations, national organizations, colleges and universities, clinics and hospitals, research institutions, and tribal government and tribal/urban Indian entities and organizations. Faith-based and community-based organizations are eligible to apply. In addition, health care delivery organizations, Historically-Black Colleges (HBCUs), Tribal Colleges and Universities (TCUs), Hispanic Serving Institutions (HSIs), Hispanic Association of Colleges and Universities members (HACUs), are also eligible to apply. Note: State and local government agencies are not eligible under this GFA.

Availability of Funds: Approximately $7.5 million is available to fund planning grants. CSAP expects to award funding to 70–75 applicants, in the amount of $90,000 to $125,000. Your budget should not exceed $125,000 in total costs (direct and indirect). Actual funding levels will depend on the availability of funds.

CSAP's Minority SAP and HIVP programs include two separate funding opportunities in FY 2002:

- This GFA provides instructions on applying for Planning Grants
- A separate GFA is available to provide instructions on applying for Services Grants.

Period of Support: Awards may be requested for up to 1 year.

Criteria for Review and Funding:

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions concerning program issues, contact: Francis C. Johnson, M.S.W., Rockwall II, Suite 1075, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6612, E-Mail: *fjohnson@SAMHSA.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, E-Mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health

officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

(a) A copy of the face page of the application (Standard form 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2002 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2002 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: May 22, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–13209 Filed 5–22–02; 12:03 pm]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2002 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 2002 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA), including Part I, *Targeted Capacity Expansion Initiatives for Substance Abuse Prevention (SAP) and HIV Prevention (HIVP) in Minority Communities: Services Grants (SP 02–005),* and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements,* before preparing and submitting an application.

Activity	Application deadliine	Est. funds FY 2002	Est. number of awards	Project period
Targeted Capacity Expansion Initiatives for Substance Abuse Prevention (SAP) and HIV Prevention (HIVP) in Minority Communities; Services Grants.	July 24, 2002	$15,100,000	40–45	3 year.

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2002 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov.*

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: SAMHSA's Center for Substance Abuse Prevention (CSAP) announces that funding is available for Fiscal Year 2002 for Planning Grants through the Targeted Capacity Expansion Initiatives for Substance Abuse Prevention (SAP) and HIV Prevention (HIVP) in Minority Communities Program.

This program responds to the health emergency in African-American, Hispanic/Latino, American Indian/Alaska Native, and Asian-American/Pacific Islander communities described by the Congressional Black and Hispanic Caucuses. It includes two initiatives:

Funds under this Services Grant initiative are available to support effective, integrated Substance Abuse Prevention (SAP) and HIV Prevention (HIVP) services for youth and other at-risk populations.

Eligibility: Funding will be directed to activities designed to deliver services specifically targeting racial and ethnic minority populations impacted by HIV/AIDS. Eligible entities may include: not for profit community-based organizations, national organizations, colleges and universities, clinics and hospitals, research institutions, and tribal government and tribal/urban Indian entities and organizations. Faith-based and community-based organizations are eligible to apply. In addition, health care delivery organizations, Historically-Black Colleges (HBCUs), Tribal Colleges and Universities (TCUs), Hispanic Serving Institutions (HSIs), Hispanic Association of Colleges and Universities members (HACUs), are also eligible to apply. Note: State and local government agencies are not eligible under this GFA.

Availability of Funds: Approximately $15.1 million is available to fund planning grants. CSAP expects to award funding to 40–45 applicants, in the amount of $250,000 to $350,000. Your budget should not exceed $350,000 in total costs (direct and indirect). Actual funding levels will depend on the availability of funds. CSAP's Minority SAP and HIVP programs include two separate funding opportunities in FY 2002:

- This GFA provides instructions on applying for Services Grants
- A separate GFA is available to provide instructions on applying for Planning Grants.

Period of Support: Awards may be requested for up to 3 years.

Criteria for Review and Funding:

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions concerning program issues, contact: Francis C. Johnson, M.S.W., Rockwall II, Suite 1075, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6612, E-Mail: *fjohnson@SAMHSA.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9666, E-Mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

(a) A copy of the face page of the application (Standard form 424).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2002 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2002 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: May 22, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–13210 Filed 5–22–02; 12:03 pm]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meetings of SAMHSA Special Emphasis Panels I in June, July, August and September 2002.

A summary of the meetings and a roster of the members may be obtained from: Ms. Coral Sweeney, Review

Specialist, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).
Meeting Date: June 3–7, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: June 3, 2002 to Adjournment.
Panel: Childrens Mental Health Initiative, SM 02–00272, Committees.
Contact: Diane McMenamin, Director, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Room 1789, Rockville, Maryland 20857.

Committee Name: SAMSHA Special Emphasis Panel I (SEP I).
Meeting Date: June 3–7, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Closed: June 3, 2002 to Adjournment.
Panel: Partnerships for Effective Youth Transition, SM 02–00372, Committees.
Contact: Diane McMenamin, Director, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Room 1789, Rockville, Maryland 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: June 10—14, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Closed: June 10, 2002 to Adjournment.
Panel: CMHS, Community Action Grants, PA 02–001.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: June 10–14, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Closed: June 10, 2002 to Adjournment.
Panel: CSAT, Targeted Capacity Expansion TI 02–009 3 Committees.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: July 15–19, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Closed: July 15, 2002 to Adjournment.
Panel: State Incentive Grants.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.
Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: July 15, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Closed: July 15, 2002.
Panel: Consumer Support Technical Assistance Center.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: July 15–19, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Closed: July 15, 2002 to Adjournment.
Panel: Youth Violence Technical Assistance Center.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: July 22–26, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Closed: July 22, 2002 to Adjournment.
Panel: American Indian/American Native Rural Planning Grants 2 Committees.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: July 22–26, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Closed: July 22, 2002 to Adjournment.
Panel: Criminal Justice 3 Committees.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I)
Meeting Date: July 29–August 2, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road Bethesda, Maryland 20814.
Closed: July 29, 2002 to Adjournment.
Panel: Treatment for Homeless 4 Committees.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I)
Meeting Date: July 29–August 2, 2002. 2 Committees.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Closed: July 29 to Adjournment.
Panel: First Responders/Public Safety Workers.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: August 5–9, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814
Closed: August 5, 2002 to Adjournment.
Panel: Adult Juvenile Family Drug Courts 3 Committees.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: August 5–9, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.
Closed: August 5, 2002.
Panel: Elderly Mental Health Outreach & Treatment 3 Committees.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: August 12–16, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: August 12, 2002 to Adjournment.
Panel: Partnerships for Effective Youth Transitions, 4 Committees.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: August 12–16, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: August 12, 2002.
Panel: Workforce Training, 3 Committees.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: August 19–23, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: August 19, 2002 to Adjournment.
Panel: Targeted Capacity Expansion/HIV, 5 Committees.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: August 26–30, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: August 26, 2002 to Adjournment.
Panel: Youth Violence Prevention, 5 Committees.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review,

Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: August 26–30, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: August 26, 2002 to Adjournment.
Panel: Adolescent Residential Treatment, 3 Committees.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: September 9–13, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: September 9, 2002 to Adjournment.
Panel: Child Trauma/Post Traumatic Stress TA Center.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: September 2–9, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: September 2, 2002 to Adjournment.
Panel: National Suicide Prevention Resource Center.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: September 2–6, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: September 2, 2002 to Adjournment.
Panel: MH Violence Coordinating Center.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: September 2–6, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: September 2, 2002 to Adjournment.
Panel: Anti-Drug Coalitions.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857..

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: September 9–13, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: September 9, 2002.
Panel: HIV/AIDS Planning & HIV/AIDS Services, 8 Committees.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: September 16–20, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: September 16, 2002.
Panel: Methadone/Ecstasy Implementation and Infrastructure, 3 Committees.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Committee Name: SAMSHA Special Emphasis Panel 1 (SEP I).
Meeting Date: September 16–20, 2002.
Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
Closed: September 16, 2002 to Adjournment.
Panel: State Treatment Needs Assessment Program, 2 Committees.
Contact: Diane McMenamin, Division of Extramural Activities, Policy and Review, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Dated: May 20, 2002.

Coral Sweeney,

Review Specialist, Division of Extramural Activities and Review, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–13108 Filed 5–23–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–21]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: May 24, 2002.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: May 17, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–12886 Filed 5–23–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Information Quality Guidelines Pursuant to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of Availability of Proposed Information Quality Guidelines.

SUMMARY: The U.S. Department of the Interior, is issuing these proposed Information Quality Guidelines in order to comply with the guidance published by the Office of Management and Budget in the **Federal Register**, Vol., 2, No. 67, dated January 2, 2002, and re-issued February 22, 2002, Vol. 67, No. 36, for implementing section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554; H.R. 5658).

FOR FURTHER INFORMATION CONTACT: Persons interested in reviewing the proposed Information Quality Guidelines issued by the Office of the Secretary, U.S. Department of the Interior, are encouraged to contact the Office of the Chief Information Officer (Attn: Nancy Trent) 1849 C Street, NW., Mail Stop 5312, Washington, DC 20240, phone: 202–208–6051. The guidelines may also be reviewed at Web site: *www.mms.gov/whatsnew.*

SUPPLEMENTARY INFORMATION: The U.S. Department of the Interior, its offices, and its eight component bureaus disseminate a wide variety of information to the public regarding the Nation's Federal lands, National Parks, natural resources, geographic and spatial data, wildlife and fisheries, and Indian lands. This document is the basis for Department policy to ensure quality of information disseminated. Interested parties may submit comments not later than 30 days from the date of this

notice. Bureaus and offices are directed to publish by July 1, 2002, a notice of availability of their guidelines in the **Federal Register** for public comment, with at least a 30-day comment period.

Dated: May 10, 2002.

P. Lynn Scarlett,

Assistant Secretary for Policy, Management and Budget.

[FR Doc. 02–13158 Filed 5–23–02; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to sections 10(a)(1)(A) and 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE023664

Applicant: Virgil Brack, Jr., Cincinnati, Ohio.

The applicant currently possesses a permit to take (survey and hold) Gray bat (*Myotis grisecens*), Indiana bat (*Myotis sodalis*), Ozark big-eared bat (*Corynhorhinus townsendii ingens*), and the Virginia big-eared bat (*Corynhorhinus townsendii virginianus*) throughout the majority of the species ranges in 27 States. The applicant requests to expand activities into the States of Connecticut, Delaware, Florida, and Nebraska. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number TE056081

Applicant: EnviroScience, Inc., Stow, Ohio.

The applicant requests a permit to take (capture and release) the following listed unionid mussel species: fanshell (*Cyprogenia stegaria*), purple catspaw (*Epioblasma obliquata obliquata*), white catspaw (E. o. perobliqua), northern riffleshell (*E. torulosa rangiana*), pink mucket pearlymussel (Lampsilis abrupta), Higgins' eye pearlymussel (*L. higginsi*), white wartyback (*Plethobasus cicatricosus*), orange-foot pimpleback pearlymussel (*P. cooperianus*), clubshell (*Pleurobema clava*), rough pigtoe (*P. plenum*), fat pocketbook (*Potamilus capax*), and winged mapleleaf mussel (*Quadrula fragosa*). Activities are proposed within the States of Ohio, Indiana, Michigan, Iowa, Wisconsin, Minnesota, Illinois, and Missouri. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number TE056264

Applicant: John Shuey, Indianapolis, Indiana.

The applicant requests a permit to take male Mitchell's satyr (*Neonympha mitchellii mitchellii*) in Indiana for genetic analysis. The scientific research is aimed at enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who requests a copy from the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, peter_fasbender@fws.gov, Telephone (612) 713–5343, or Fax (612) 713–5292.

Dated: May 2, 2002.

T.J. Miller,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 02–13077 Filed 5–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Environmental Assessment for the Delta Management at Fort St. Philip Project, Plaquemines Parish, Louisiana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the draft Environmental Assessment (EA) for the Delta Management at Fort St. Philip Project. A more detailed description of the project is outlined in the Supplementary Information section below. A copy of the draft EA may be obtained by sending a written request to our Louisiana Field Office (see **ADDRESSES** section). Requests must be made in writing to be processed. This notice is provided pursuant to National Environmental Policy Act regulations (40 CFR 1506.6).

We specifically request information, views, and opinions from the public through this Notice on the Federal action, including the identification of any other aspects of the human environment not already identified in the our EA.

DATES: Written comments on the draft EA must be received on or before June 24, 2002.

ADDRESSES: Persons wishing to review the draft EA may obtain a copy by writing to the Field Supervisor, U.S. Fish and Wildlife Service, 646 Cajundome Boulevard, Suite 400, Lafayette, Louisiana 70506. If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Louisiana Field Office at the address listed above. You also may comment via the Internet to ''*kevin_roy@fws.gov*''. Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at the telephone numbers listed below (*see* **FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Louisiana Field Office. Data or comments regarding the draft EA should be submitted in writing to the Louisiana Field Office to be adequately considered in the our decision-making process. Documents will be available for public inspection by appointment during normal business hours at our Louisiana Field Office (Attn: Kevin Roy).

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Roy, Fish and Wildlife Biologist, (*see* **ADDRESSES** section), telephone: 337/291–3120 or 337/291–3100, facsimile: 337/291–3139.

SUPPLEMENTARY INFORMATION:

Background

The Delta Management at Fort St. Philip Project, is being funded through the Coastal Wetlands Planning, Protection and Restoration Act on the Tenth Priority Project List. The project purpose is to promote the formation of emergent marsh through the construction of artificial crevasses and earthen terraces. The project is located near the east bank of the Mississippi River adjacent to Fort St. Philip in Plaquemines Parish, Louisiana. The project area has experienced extensive marsh loss since the mid 1970s, with loss rates as high as 8 percent per year.

However, many areas are experiencing marsh growth as sediment introduced from the Mississippi River through a natural crevasse is causing infilling of open water areas. The preferred alternative is to construct earthen terraces and artificial crevasses to enhance the natural processes of marsh building now occurring in the project area.

Public Comments Solicited

We solicit written comments on the draft EA described. All comments received by the date specified above will be considered in our decision-making process.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Author

The primary author of this document is Kevin Roy (*see* **ADDRESSES** Section).

Authority

The authority for this action is the National Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*) and CEQ Regulations 40 CFR 1506.6.

Dated: May 6, 2002.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 02–13078 Filed 5–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Low-Effect Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for Construction of a Single-Family Residential Home Site on the Dahle Property, Colorado Springs, Colorado

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that Lee J. Dahle has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended. The proposed permit would authorize the incidental take of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*), federally listed as threatened, through loss and modification of its habitat associated with construction and occupation of a residential home site at the Dahle Property, Colorado Springs, Colorado. The duration of the permit would be 5 years from the date of issuance.

We announce the receipt of the applicant's incidental take permit application that includes a proposed Low-Effect Habitat Conservation Plan (HCP) for the Preble's meadow jumping mouse for the Dahle Property. The proposed HCP is available for public comment. It fully describes the proposed project and the measures the applicant would undertake to minimize and mitigate project impacts to the Preble's meadow jumping mouse. All comments on the HCP and permit application will become part of the administrative record and will be available to the public.

DATES: Written comments on the permit application, and Habitat Conservation Plan should be received on or before June 24, 2002.

ADDRESSES: Comments regarding the permit application and HCP should be addressed to LeRoy Carlson, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the HCP and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulation prohibit the ''take'' of a species listed as endangered or threatened. Take is defined under the Act, in part, as to kill, harm, or harass a federally listed species. However, the Service may issue permits to authorize ''incidental take'' of listed species under limited circumstances. Incidental Take is defined under the Act as take of a listed species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

The Dahle Property is located at 17 El Dorado Lane, Lot 5, Block 4 in Thunderbird Estates Subdivision, along Monument Creek, in the Section 6, Township 13 South, Range 66 West, Southwest ¼ in the Pikeview quandrangle, in the Town of Colorado Springs, El Paso County, State of Colorado. The project will involve 0.65 acres, but will directly impact a maximum of 0.15 acres that may result in incidental take of the Preble's meadow jumping mouse. The site will impact upland areas only.

Alternatives considered in addition to the Proposed Action were awaiting approval of the El Paso County Regional Habitat Conservation Plan, and no action. The last alternative eliminated potential take of Preble's. The onsite, offsite, and cumulative impacts of the proposed Project and all associated development and construction activities and mitigation activities proposed by the HCP will have no significant impact on other threatened or endangered species, vegetation, wildlife, wetlands, geology/soils, land use, water resources, air and water quality, or cultural resources. None of the proposed impacts occur within the riparian corridor. All of the proposed impacts are in upland areas inside the 100-year floodplain. Utilizing the mouse protection habitat definition, the proposed development could impact up to 0.15 acre of potential mouse habitat for the residential lot. The mitigation will likely provide a net benefit to the Preble's mouse and other wildlife by improving or creating new riparian areas, planting of native grasses, and protecting existing habitat

along Monument Creek from any future development.

Only one federally listed species, the threatened Preble's meadow jumping mouse, occurs onsite and has the potential to be adversely affected by the project. To mitigate impacts that may result from incidental take, the HCP provides mitigation for the residential site by protection of the Monument Creek corridor onsite and its associated riparian areas from all future development through the enhancement of 0.5 acre through native grass planting, shrub planting, weed control, preservation in a native and unmowed condition, and the placement of the proposed building site closer to the road and farther away from mouse habitat. Measures will be taken during construction to minimize impact to the habitat including limited site access and the placement of spoils piles only at the front end of the lot, away from the creek. All of the proposed mitigation area is within the boundaries of the Dahle property, all of which is included in the drainage basin of Monument Creek.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the Plan, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of the Preble's meadow jumping mouse in conjunction with the construction and occupation of a single-family residential lot on the Dahle Property. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: May 8, 2002.

David E. Heffernan,

Acting Regional Director, Region 6.

[FR Doc. 02–13076 Filed 5–23–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Availability, Assessment Plan for Natural Resources Injured by Releases of Hazardous Substances From the Leviathan Mine

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs, on behalf of the Washoe Tribe of Nevada and California, the U.S. Fish and Wildlife Service, the U.S. Forest Service, the California Department of Fish and Game, and the Nevada Division of Environmental Protection, announces the release for public review of the Leviathan Mine Natural Resource Damage Assessment Plan—Public Release Draft (Assessment Plan). The Plan was developed by the Leviathan Mine Council Natural Resource Trustees, consisting of representatives of the Tribe and agencies listed above, to assess injuries to natural resources resulting from releases of hazardous substances from the Leviathan Mine in Alpine County, California. The Assessment Plan describes the proposed approach for determining and quantifying natural resource injuries and calculating damages associated with these injuries.

DATES: Comments on the Assessment Plan must arrive by June 24, 2002.

ADDRESSES: You may mail or hand deliver written comments to Mr. Wayne Nordwall, Regional Director, Bureau of Indian Affairs, Western Regional Office, P.O. Box 10, Phoenix, AZ 85001; or 400 N. Fifth Street, Phoenix, AZ 85004; or by facsimile (602) 379–4413.

The Assessment Plan is available for review, by appointment and during normal business hours, at the office locations of the following officials: (1) Curtis Milsap, Bureau of Indian Affairs, Western Nevada Agency, 1677 Hot Springs Road, Carson City, Nevada 89706, telephone (775) 887–3570; (2) John Krause, Bureau of Indian Affairs, Western Regional Office, 400 N. Fifth Street, Phoenix, Arizona 85004, telephone (602) 379–3723; (3) Robert Greenbaum, Washoe Tribe of Nevada and California, 919 U.S. Hwy. 395 South, Gardnerville, Nevada 89410, telephone (775) 265–4191 ext. 155; (4) Stan Wiemeyer, U.S. Fish & Wildlife Service, Nevada Fish & Wildlife Office, 1340 Financial Blvd., Suite 234, Reno, Nevada 89502, telephone (775) 861–6300; and (5) Melanie Markin, U.S. Fish & Wildlife Service, 2800 Cottage Way, W–2605, Sacramento, California 95825, telephone (916) 414–6638. In addition, the Assessment Plan is available for review at the Alpine County Library, 270 Laramie Street, Markleeville, California 96120, telephone (530) 694–2120; and on the Nevada Division of Environmental Protection Web site at *http://ndep.state.nv.us/ admin/ leviathan.htm.*

FOR FURTHER INFORMATION CONTACT: Robert Greenbaum, (775) 265–4191 ext. 155.

SUPPLEMENTARY INFORMATION: In 1951, the Anaconda Copper Mining Company purchased the Leviathan Mine property, the former site of small copper sulfate and sulfur underground mining operations, in Alpine County, California. Anaconda developed the former underground mine into an open pit sulfur mine and operated the Mine through 1962. Anaconda sold the Mine in early 1963, but no further mining operations took place thereafter.

Releases of hazardous substances from the Mine began in the 1950s and continue today. Infiltration of precipitation into and through the adits (tunnels from the former underground mine), open pit, and overburden piles, along with direct contact of mine wastes with surface waters, has created acid mine drainage (AMD), which has been released, and continues to be released into the environment. AMD, which contains arsenic, copper, sulfuric acid, and other hazardous substances, has continued to be released into groundwater and into the surface waters and sediments in Aspen and Leviathan Creeks, and from there into Bryant Creek and the East Fork Carson River. Bryant Creek begins in California and crosses into Nevada, passing through several Indian Trust Allotments. Bryant Creek then flows into the East Fork Carson River. Releases of AMD from the Mine have resulted in fish kills in Leviathan and Bryant Creeks and the East Fork Carson River.

From the early 1980s, when the State of California acquired ownership of the Mine, through the late 1990s, the Lahontan Regional Water Quality Control Board (LRWQCB) constructed and operated the Leviathan Mine Pollution Abatement Project. However, this project did not eliminate the releases of hazardous substances, and it redirected several sources of AMD to new discharge points. Despite additional efforts by the LRWQCB, the U.S. Environmental Protection Agency (EPA), and the Atlantic Richfield Company (ARC), the successor in interest to its wholly owned subsidiary, Anaconda, to reduce the release of hazardous substances from the Mine, releases of AMD continued to have deleterious effects on natural resources at the Mine and downstream.

In May 2000, EPA added the Leviathan Mine Superfund Site to the National Priorities List [65 FR 30482]. Also in 2000, EPA issued separate orders to the LRWQCB and ARC pursuant to section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) [42 U.S.C. 9606(a)] to engage in hazardous waste removal actions. EPA's order to ARC also requires ARC to develop long-term response plans, including a

Remedial Investigation/ Feasibility Study.

Pursuant to section 107(f) of CERCLA [42 U.S.C. 9607(f)], the Leviathan Mine Council Natural Resource Trustees (Trustees) are representatives of federal, state, and tribal government entities with trust authority over natural resources potentially injured by releases of hazardous substances from the Leviathan Mine. While EPA's focus is protecting human health and the environment, the Trustees have the authority to seek compensation from potentially responsible parties (PRPs) for past, present, and future injuries to trust natural resources caused by releases from the Mine. Such resources include, but are not limited to, groundwater, surface water, sediment, fish (including Lahontan Cutthroat Trout) and other aquatic biota, floodplain soils, riparian vegetation, and wildlife in and around the Leviathan Creek and Bryant Creek drainages, and a portion of the East Fork Carson River drainage. The assessment area includes the area surrounding and downstream from the Leviathan Mine in Alpine County, California; the Toiyabe National Forest; Indian Trust Allotments; Douglas County, Nevada; and the Washoe Indian Community of Dresslerville.

The Assessment Plan developed by the Trustees is intended to assess injuries to natural resources resulting from releases of hazardous substances from the Leviathan Mine. The Assessment Plan describes the proposed approach for determining and quantifying natural resource injuries and calculating damages associated with these injuries. By developing an Assessment Plan, the Trustees can ensure that the natural resource damage assessment will be completed at a reasonable cost. The Trustees also intend for the Assessment Plan to communicate proposed assessment methods to PRPs and to the public in an effective manner so that they can productively participate in the assessment process. The ultimate goal of the assessment is to seek damages from PRPs for the purpose of developing projects which will restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources and the services they previously provided [43 CFR 11.81(a)(1)]. The Trustees may amend the Assessment Plan, but any significant amendments will be made available for public review [43 CFR 11.32(e)].

Public Comment Availability

Comments, including names and home addresses of respondents, will be available for public review at the mailing addresses shown in the **ADDRESSES** section, during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: May 14, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–13060 Filed 5–23–02; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA.

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Robert S. Peabody Museum of Archaeology, Phillips Academy, Andover, MA, that meet the definition of ''sacred objects'' under Section 2 of the Act.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 43 CFR 10.2 (c). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these cultural items. The National Park Service is not responsible for the determinations within this notice.

Between 1915 and 1929, these cultural items were recovered from several locations at Pecos Pueblo, NM, during excavations conducted by the Phillips Academy under the direction of Alfred Vincent Kidder. The 63 objects are 16 pipes, fragments of 3 ceramic vessels, 4 effigies, 25 whole and fragmented shell beads, 1 shell pendant, 8 bird bone flutes, 3 fragments of quartz, 2 fragments of mica, and 1 fragment of turquoise.

Based on the ceramic types recovered from this site, Pecos Pueblo was occupied between A.D. 1300 and 1700. Historic records document occupation at the site until 1838 when the last inhabitants left the pueblo and went to the Pueblo of Jemez. In 1936, an Act of Congress recognized the Pueblo of Jemez as a ''consolidation'' and ''merger'' of the Pueblo of Pecos and the Pueblo of Jemez; this act further recognizes that all property, rights, titles, interests, and claims of both pueblos were consolidated under the Pueblo of Jemez.

In consultation with members of the Eagle Watcher's Society, as well as other traditional religious leaders of the Pueblo of Jemez, it has been determined by officials of the Robert S. Peabody Museum of Archaeology that these objects are integral to present-day religious practice at the Pueblo.

Based on the above-mentioned information, officials of the Robert S. Peabody Museum of Archaeology have determined that, pursuant to 43 CFR 10.2 (d)(3), these cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Robert S. Peabody Museum of Archaeology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these sacred objects and the Pueblo of Jemez, New Mexico.

This notice has been sent to officials of the Pueblo of Jemez, New Mexico. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these sacred objects should contact Malinda Blustain, Interim Director, Robert S. Peabody Museum, Phillips Academy, Andover, MA, telephone (978) 749-4496 before June 24, 2002. Repatriation of these sacred objects to the Pueblo of Jemez, New Mexico, may begin after that date if no additional claimants come forward.

Dated: April 16, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02–13162 Filed 5–23–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be practical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issues, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or government agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determination Issued Under the Davis-Bacon and related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT020002 (Mar. 1, 2002)
CT020005 (Mar. 1, 2002)

Volume II

District of Columbia
DC020001 (Mar. 1, 2002)
DC020003 (Mar. 1, 2002)
Delaware
DE020002 (Mar. 1, 2002)
DE020005 (Mar. 1, 2002)
DE020009 (Mar. 1, 2002)
Maryland
MD020001 (Mar. 1, 2002)
MD020002 (Mar. 1, 2002)
MD020010 (Mar. 1, 2002)
MD020017 (Mar. 1, 2002)
MD020031 (Mar. 1, 2002)
MD020035 (Mar. 1, 2002)
MD020036 (Mar. 1, 2002)
MD020043 (Mar. 1, 2002)
MD020048 (Mar. 1, 2002)
MD020057 (Mar. 1, 2002)
MD020058 (Mar. 1, 2002)
Pennsylvania
PA020059 (Mar. 1, 2002)
West Virginia
WV020002 (Mar. 1, 2002)
WV020010 (Mar. 1, 2002)

Volume III

None

Volume IV

Indiana
IN020006 (Mar 1, 2002)

Volume V

None
Arkansas
AR020008 (Mar. 1, 2002)
AR020023 (Mar. 1, 2002)
AR020027 (Mar. 1, 2002)
Missouri
M0020001 (Mar. 1, 2002)
M0020003 (Mar. 1, 2002)
M0020004 (Mar. 1, 2002)
M0020006 (Mar. 1, 2002)
M0020007 (Mar. 1, 2002)
M0020010 (Mar. 1, 2002)
M0020015 (Mar. 1, 2002)
M0020019 (Mar. 1, 2002)
M0020020 (Mar. 1, 2002)
M0020041 (Mar. 1, 2002)
M0020043 (Mar. 1, 2002)
M0020047 (Mar. 1, 2002)
M0020049 (Mar. 1, 2002)
M0020051 (Mar. 1, 2002)
M0020052 (Mar. 1, 2002)
M0020053 (Mar. 1, 2002)
M0020055 (Mar. 1, 2002)
M0020056 (Mar. 1, 2002)
M0020057 (Mar. 1, 2002)
M0020059 (Mar. 1, 2002)

Volume VI

None

Volume VII

California
CA020009 (Mar. 1, 2002)
CA020033 (Mar. 1, 2002)
CA020036 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S.

Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 16th day of May 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–12811 Filed 5–23–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed new collection of the ''Current Population Survey (CPS) Volunteer Supplement.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section of this notice on or before July 23, 2002.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (*See* **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The September 2002 CPS Volunteer Supplement will be conducted at the request of the USA Freedom Corps. The Volunteer Supplement will provide information on the total number of individuals in the U.S. involved in unpaid volunteer activities, factors that motivate volunteerism, measures of the frequency or intensity with which individuals volunteer, types of organizations that facilitate volunteerism, and activities in which volunteers participate.

Because the Volunteer Supplement is part of the CPS, the same detailed demographic information collected in the CPS will be available on respondents to the Supplement. Comparisons of volunteer activities will be possible across characteristics such as sex, race, age, and educational attainment of the respondent. It is intended that the Supplement will be conducted with some regularity in order to gauge changes in volunteerism.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Action

Office of Management and Budget clearance is being sought for the CPS Volunteer Supplement.

Type of Review: New Collection.

Agency: Bureau of Labor Statistics.

Title: CPS Volunteer Supplement.

OMB Number: 1220–NEW.

Affected Public: Households.

Total Respondents: 58,000.

Frequency: On occasion.

Total Responses: 116,000.

Average Time Per Response: 3 minutes.

Estimated Total Burden Hours: 5,800 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 20th day of May, 2002.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 02–13094 Filed 5–23–02; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Meeting/ Teleconference

AGENCY: National Council on Disability (NCD).

TIMES AND DATES: 4 p.m., EDT, June 13, 2002 (teleconference); 4 p.m. EDT, July 24, 2002 (meeting); 4 p.m. EDT, September 18, 2002 (teleconference).

PLACE: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

STATUS: All parts of these meetings will be open to the public. Those interested in participating in either the meeting or the conference call should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for the conference call.

MATTERS TO BE CONSIDERED: Roll call, announcements, reports, new business, adjournment.

CONTACT PERSON FOR MORE INFORMATION: Gerrie Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

Youth Advisory Committee Mission: The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Dated: May 7, 2002.

Ethel D. Briggs,

Executive Director.

[FR Doc. 02–13050 Filed 5–23–02; 8:45 am]

BILLING CODE 6820–MA–P

NUCLEAR REGULATORY COMMISSION

[License No. 50–483, Docket No. NPF–30, EA–01–005]

In the Matter of AmerenUE, Callaway Nuclear Plant; Order Imposing Civil Monetary Penalty

I

AmerenUE (Licensee) is the holder of License No. NPF–30 issued by the Nuclear Regulatory Commission (NRC or Commission) on October 18, 1984. The license authorizes the Licensee to operate the Callaway Nuclear Plant in accordance with the conditions specified therein.

II

An investigation of the Licensee's activities was completed in November 2000. The results of the investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated May 14, 2001. The Notice stated the nature of the violation, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated January 22, 2002. In its response, the Licensee denied the violation, requesting withdrawal of the violation and remission of the proposed civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined that the violation occurred as stated in the May 14, 2001 Notice of Violation and Proposed Imposition of Civil Penalty. Therefore, the NRC has determined that the civil penalty proposed for this violation should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $55,000 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time of making the payment, the licensee shall submit a statement indicating when and by what method payment is made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be: Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice of Violation referenced in Section II, and whether on the basis of such violation, this Order should be sustained.

Dated this 16th day of May, 2002.

For the Nuclear Regulatory Commission.

William F. Kane,

Deputy Executive Director for Reactor Programs.

Appendix to Order Imposing Civil Penalty; NRC Evaluation and Conclusion of Licensee's Requests

On May 14, 2001, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation of 10 CFR 50.7 identified during an NRC investigation. The Licensee responded to the Notice in a letter dated January 22, 2002. In its response, the Licensee denied the violation, requesting withdrawal of the violation and remission of the proposed civil penalty. The NRC's evaluation and conclusion regarding the licensee's response are as follows:

Restatement of Violation

10 CFR 50.7(a) prohibits discrimination by a Commission licensee against an employee for engaging in certain protected activities. Discrimination includes discharge or other actions relating to the compensation, terms, conditions, and privileges of employment. Under 10 CFR 50.7(a)(1)(i), the activities that are protected include, but are not limited to, the reporting by an employee to his employer information about alleged regulatory violations.

Contrary to the above, The Wackenhut Corporation (TWC), a contractor of Union Electric, a 10 CFR part 50 licensee, and Union Electric discriminated against a security officer and a training instructor for having engaged in protected activity. Specifically, on October 27, 1999, the security officer and the training instructor identified to TWC a violation of NRC requirements at the Callaway Nuclear Plant, namely that TWC had hired and assigned an individual to the security organization when that individual did not have a high school diploma or equivalent. The hiring of this individual was in violation of 10 CFR part 73, Appendix B, Section I.A.1.a, which provides that prior to employment or assignment to a security organization, an individual must possess a high school diploma or pass an equivalent performance examination. Based at least, in part, on this protected activity, TWC unfavorably terminated the security officer's employment for lack of trustworthiness and gave a written reprimand to the training instructor on November 19, 1999, and Union Electric revoked the security officer's unescorted access authorization for lack of trustworthiness.

This is a Severity Level III violation (Supplement VII). Civil Penalty—$55,000

Summary of Licensee's Response to Violation

The Licensee denied the violation, asserting that there is no evidence that decisions made by AmerenUE's Access Control Supervisor were motivated by an intent to retaliate against the security officer. AmerenUE stated that based on the information known to the Access Control Supervisor at the time these decisions were made, the Access Control Supervisor acted reasonably and in good faith. The Licensee's specific arguments were:

(1) AmerenUE did not knowingly rely on a biased investigation and report by TWC to revoke the security officer's Access Authorization because the Access Control Supervisor had no reason to suspect that the TWC Investigation was biased. The Access Control Supervisor spoke to the TWC Project Manager on November 20, 1999, to inquire about the security officer's termination. The TWC Project Manager informed her that TWC discovered during the course of an investigation that the security officer misrepresented herself as a representative of Callaway when the security officer called the high school principal. The Access Control Supervisor was informed that the investigation was independent and was conducted by an off-site auditor. The Access Control Supervisor reasoned that an individual whose employment was terminated due to her lack of trustworthiness should not maintain her unescorted access authorization, and therefore the security officer's unescorted access authorization was revoked. The Access Control Supervisor did not see the TWC report until after the security officer's access was revoked and did not have cause to suspect the TWC investigation was biased. Accordingly, she could not have knowingly relied on a biased investigation report. AmerenUE could not have violated 10 CFR 50.7 unless the preponderance of the evidence shows that the Access Control Supervisor revoked the security officer's access authorization with the intention of retaliating against the security officer for her protected activity.

(2) The Access Control supervisor made a good faith effort to determine whether a temporary watchman knowingly misrepresented his educational qualifications by interviewing the high school principal on December 2, 1999. The principal stated his belief that the temporary watchman likely did not know he had not graduated, and ''cited circumstances from the high school program to support this view.'' When AmerenUE subsequently became aware of information suggesting that the temporary watchman likely knew he had not graduated from high school, his access was revoked. The Access Control Supervisor's failure to discover particular information in her initial investigation does not amount to bad faith. The Access Control Supervisor had no motive to treat the temporary watchman more favorably than she treated the security officer.

NRC Evaluation of Licensee's Response to Violation

AmerenUE's principal argument is that AmerenUE, and the Access Control Supervisor in particular, were not motivated by an intent to retaliate against the security officer. AmerenUE then argues that there can be no violation of 10 CFR 50.7 on the part of AmerenUE without showing such intent. AmerenUE provides many facts in support of its arguments. The central issues are whether a violation of 10 CFR 50.7 occurred, and whether AmerenUE is responsible for that violation.

AmerenUE has provided no new information regarding whether a violation of 10 CFR 50.7 occurred, and did not address whether its contractor, TWC, engaged in discriminatory action. The NRC has reviewed the information in AmerenUE's January 22, 2002 response, as well as the information TWC provided in response to this violation in a January 23, 2002 letter, and concludes that a violation of 10 CFR 50.7 occurred. As stated in the Notice of Violation, the security officer and the training instructor engaged in protected activity, each was subjected to adverse action, and the adverse action occurred, at least in part, because of the protected activity.

AmerenUE's argument that the NRC must show retaliatory intent on the part of AmerenUE personnel is mistaken. Discriminatory intent on the part of its Access Control Supervisor is not necessary for AmerenUE to have violated 10 CFR 50.7. A violation of 10 CFR 50.7 by a licensee's contractor may be grounds for imposition of a civil penalty upon the licensee. 10 CFR 50.7(c)(2). *See Atlantic Research Corporation,* CLI–80–7, 11 NRC 413, 419–424 (1980). The fact that AmerenUE delegated a portion of its responsibilities to a contractor, *i.e.*, The Wackenhut Corporation (TWC), does not relieve AmerenUE of its responsibility to maintain compliance with NRC requirements at Callaway. AmerenUE participated in this matter by revoking the security officer's access to the facility, an adverse action, and in doing so AmerenUE relied upon biased information provided by its contractor, who thereby participated in taking this action. AmerenUE could have, and should have, exercised more care in implementing adverse action against an individual who was known to have raised a concern about compliance with security requirements at Callaway.

NRC Conclusion

The NRC has concluded that this violation occurred as stated, and that AmerenUE has not provided a basis for withdrawal of the Notice of Violation or the civil penalty. Consequently, the proposed civil penalty in the amount of $55,000 should be imposed.

[FR Doc. 02–13081 Filed 5–23–02; 8:45 am]
BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information, Services Washington, DC 20549

Extension:
Rule 17a–22, SEC File No. 270–202, OMB Control No. 3235–0196

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 USC 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

sbull Rule 17a–22 Supplemental Material of Registered Clearing Agencies

Rule 17a–22 under the Securities Exchange Act of 1934 (''Exchange Act'')[1] requires all registered clearing agencies to file with the Commission three copies of all materials they issue or make generally available to their participants or other entities with whom they have a significant relationship. The filings with the Commission must be made within ten days after the materials are issued, and when the Commission is not the appropriate regulatory agency, the clearing agency must file one copy of the material with its appropriate regulatory agency. The Commission is responsible for overseeing clearing

[1] 15 U.S.C. 78a *et. seq.*

agencies and uses the information filed pursuant to Rule 17a–22 to determine whether a clearing agency is implementing procedural or policy changes. The information filed aids the Commission in determining whether such changes are consistent with the purposes of Section 17A of the Exchange Act. Also, the Commission uses the information to determine whether a clearing agency has changed its rules without reporting the actual or prospective change to the Commission as required under Section 19(b) of the Exchange Act.

The respondents to Rule 17a–22 generally are registered clearing agencies.[2] The frequency of filings made by clearing agencies pursuant to Rule 17a–22 varies, but on average there are approximately 200 filings per year per clearing agency. Because the filings consist of materials that have been prepared for widespread distribution, the additional cost to the clearing agencies associated with submitting copies to the Commission is relatively small. The Commission staff estimates that the cost of compliance with Rule 17a–22 to all registered clearing agencies is approximately $5,220. This represents one dollar per filing in postage, or a total of $3,600. The remaining $1,620 (or approximately 31% of the total cost of compliance) is the estimated cost of additional printing, envelopes, and other administrative expenses. (The estimated total cost per response is $1.45 per page representing $1.00 per page in postage plus $0.45 for printing, envelopes, and other administrative expenses.)

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: May 16, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–13100 Filed 5–23–02; 8:45 am]

BILLING CODE 8010–01–P

[2] Respondents include temporarily registered clearing agencies. Respondents also may include clearing agencies granted exemptions from the registration requirements of Section 17A, conditioned upon compliance with Rule 17a–22.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45945; File No. SR–CBOE–2002–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Allow for $0.50 Strike Price Intervals for Options Based on Certain Exchange-Traded Funds

May 16, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 8, 2002, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange submitted Amendment No. 1 to the proposed rule change on May 15, 2002.[3] The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing Amendment No. 1 with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange represents that CBOE has the necessary systems capacity to support any additional series of options that may be added pursuant to the proposed rule change. The Exchange also attached a letter from the Options Price Reporting Authority (''OPRA''), in which OPRA represents that OPRA has the capacity to support any additional series of options that may be added pursuant to the proposed rule change. *See* letter from Angelo Evangelou, Senior Attorney, Legal Division, CBOE, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated May 14, 2002 (''Amendment No. 1'').

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6). In its filing, the CBOE requested that the Commission waive the rule's requirements of a five-day pre-filing notice and a 30-day operative delay.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to allow for $0.50 strike price intervals for options based on certain exchange-traded funds. The text of the proposed rule change follows. Proposed new language is italicized.

Rule 5.5. Series of Option Contracts Open for Trading

(a)–(c) No change.

* * * Interpretations and Policies:

.01 The interval between strike prices of series of options on individual stocks will be:

(a) $2.50 or greater where the strike price is $25.00 or less; less, or where the stock represents an interest in a registered investment company that satisfies the criteria set forth in Interpretation and Policy .06 under Rule 5.3 and where the strike price is $200.00 or less;

(b) $5.00 or greater where the strike price is greater than $25.00, or where the stock represents an interest in a registered investment company that satisfies the criteria set forth in Interpretation and Policy .06 under Rule 5.3 and where the strike price is more than $200,00;

(c) $10.00 or greater where the strike price is greater than $200.00;

.02–.05 No change.

.06 Notwithstanding Interpretation and Policy .01 above, the interval between strike prices may be $0.50 or greater for options based on IPSs that correspond generally to the price and yield performance of 1/10th the value of the S&P 100 Index, *and for options based on a security that represents an interest in a registered investment company that corresponds generally to the price and yield performance of 1/100th the value of the Dow Jones Industrial Average.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish $0.50 strike price intervals for options based on DIAMONDS®, an exchange-traded fund that represents ownership in a unit investment trust established to hold a portfolio of stocks replicating the Dow Jones Industrial Average. DIAMONDS® currently trade on several national securities exchanges. The Exchange intends to list options on DIAMONDS® pursuant to existing listing standards set forth in CBOE Rule 5.3, Interpretation and Policy .06.

The Exchange believes that it is appropriate to amend CBOE Rule 5.5 (Series of Option Contracts Open for Trading) to provide that options on DIAMONDS® be set to $0.50 or greater strike price intervals. These ½ point increments are needed to correspond to CBOE Rule 24.9, Interpretation and Policy .01(b) which provides that DJX index options (index options based on 1/100th of the value of the Dow Jones Industrial Average) may trade in strike intervals as narrow as $0.50. Because DJX and DIAMONDS® are both based on 1/100th of the value of the Dow Jones Industrial Average, the significant difference between DJX and options on DIAMONDS® will be that DJX options are cash-settled and DIAMONDS® options will be physically-settled. CBOE is listing options on DIAMONDS® recognizing that customers may prefer one settlement type over the other, but providing customers such an alternative would not be meaningful if the two products could not trade in the same strike price intervals. Thus, CBOE believes that to effectively compliment CBOE's DJX index option product and to help ensure efficient trading of options on the DIAMONDS®, adopting $0.50 strike price intervals for DIAMONDS® options is necessary.

CBOE notes that the Commission has previously approved a similar rule change filing adopting $0.50 strike price intervals for options on the iShares S&P 100 Index Fund (ticker symbol OEF).[6]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(5),[8] in particular, because it will permit trading in options based on DIAMONDS® pursuant to strike intervals designed to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options based on an additional product.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest; provided that the Exchange has provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6)[11] does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if such action is consistent with the protection of investors and the public interest. The CBOE has requested that the Commission accelerate the implementation of the proposed rule change so that it may take effect prior to the 30 days specified in Rule 19b–4(f)(6)(iii).[12] The Commission has determined to make the proposed rule change operative as of the date of this notice.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally requires that a self-regulatory organization give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. However, Rule 19b–4(6)(iii)[15] permits the Commission to designate a shorter time. The CBOE seeks to have the five-business-day pre-filing requirement waived with respect to the proposed rule change.[16] The Commission has determined to waive the five-business-day pre-filing requirement with respect to this proposal.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File Number SR–CBOE–2002–25 and should be submitted by June 14, 2002.

---

[6] *See* Securities Exchange Act Release No. 41995 (February 15, 2001), 66 FR 11341 (February 23, 2001).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes of accelerating the implementation of the proposed rule change only, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *See supra* note 4.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–12987 Filed 5–23–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45957; File No. SR–NASD–2002–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by National Association of Securities Dealers, Inc. Relating to Continuous Operation of the Nasdaq National Market System During Market Hours

May 17, 2002.

Pursuant to section 19(b)(1) of the Act,[1] notice is hereby given that on February 14, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed Amendment No. 1 on May 17, 2002.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will allow the continued operation of the National Market Execution System (''NNMS'' or ''SuperSoes'') so as to trade through the inside quotations of market participants that are inaccessible through the SuperSoes system. Below is the text of the proposed rule change. Proposed deletions are in brackets.

* * * * *

4710. Participant Obligations in NNMS

(a) through (b)(9)

[(10) In the event that there are no NNMS Market Makers at the best bid (offer) disseminated by Nasdaq, market orders to sell (buy) entered into NNMS will be held in queue until executable, or until 90 seconds has elapsed, after which such orders will be rejected and returned to their respective order entry firms.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In July of 2001, Nasdaq implemented SuperSoes, which provides for automatic execution against most market participant quotes in Nasdaq National Market Securities. While a great improvement over the order-delivery environment prevalent in Nasdaq before its adoption, the current operation and functionality of SuperSoes can, in a specific instance, inappropriately inhibit the smooth functioning of the Nasdaq market. This occurs when non-SuperSoes, and thus non-auto-executable, Electronic Communications Networks (''ECNs'') that link to the market via Nasdaq's SelectNet order-delivery system are alone in posting the best price to buy or sell a particular security. SuperSoes will automatically execute only at the best-displayed bid or offer. If an ECN is alone in displaying either the best price to buy or sell a particular security, all SuperSoes orders entered into the system on the opposite side of the market where the ECN's best price remains alone are held by the SuperSoes system for up to 90 seconds, or until the ECN moves its quote, or until a market participant accessible via SuperSoes also moves to the inside price. During the period an ECN remains alone at the best price, the SuperSoes system, in effect, shuts down. The suspension of the SuperSoes system's operation in this circumstance prevents other market participants from automatically accessing liquidity at and near the inside and significantly degrades market quality and functionality for the overwhelming majority of Nasdaq market participants, including public investors. These negative impacts are borne out by a recent analysis by Nasdaq's Economic Research Department of execution times in the SuperSoes system. That analysis is summarized below.

First, the analysis indicates approximately 42% of total SuperSoes orders are significantly slowed down (taking over ½ second to execute) because an ECN that does not accept automatic execution is alone at the inside.[3] In Nasdaq 100 securities, approximately 47% of SuperSoes orders are similarly delayed. The sheer length of these delays is also troublesome, with the average execution time of SuperSoes orders in Nasdaq 100 securities when an ECN is alone at the inside taking over 5 times as long (1.03 seconds) to execute, than when an auto-ex participant is at the inside and the SuperSoes system operates without restriction (0.19 seconds).

These delays are also related to just how often SuperSoes is prevented from performing at all. In Nasdaq 100 stocks, ECNs that do not take automatic execution are alone at either the bid or offer an average 70% of the time (for the median stock, 75% of the time). This means that Nasdaq's SuperSoes system is not processing normally on either the bid or offer side of market the majority of the time in one or more of Nasdaq's most active securities.

Not surprisingly, these delays also have a material impact on the execution that a party entering a SuperSoes order can expect. Nasdaq's analysis indicates that a party entering an order into SuperSoes when an ECN is alone at the inside has just a 33% chance that its order will be executed in full. When SuperSoes has an auto-ex participant at the inside, the system continues to operate, and the chance of getting an order executed in full rises dramatically to over 70%. In short, Nasdaq's analysis shows that the continuous shutting down of Nasdaq's primary execution facility has dramatic detrimental consequences for the investing public.

In response, Nasdaq has determined to modify the operation of SuperSoes as it relates to the processing of orders where an ECN is alone at the best price. In short, SuperSoes will be modified so as to not automatically shut down when an ECN is alone at the inside. Market participants will be able, consistent with ongoing best execution obligations, to continue to send market orders, or marketable limit orders, to SuperSoes

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (May 17, 2002).

[3] A portion of this delay is also attributable to processing queues in the SuperSoes system itself. It is Nasdaq's view that many of these queues form as the direct result of orders not being allowed to execute automatically because SuperSoes suspends operation when an ECN that does not take automatic execution is alone at the inside.

for execution. Firms not wishing to bypass ECNs alone at the inside quote will continue to have the option to direct Nasdaq to attempt to access the ECN's quote via SelectNet if they so desire.

By enhancing SuperSoes to allow it to automatically access liquidity on an ongoing basis, Nasdaq market participants will be given the maximum amount of flexibility to protect and service their customers. In addition, the removal of the potential single point of failure represented by a single ECN quote at the inside market which is accessible only through a separate, and non-automatic, execution linkage ensures that the main trading system of the Nasdaq market continues to operate throughout the day without the potential for disruptive, intermittent suspensions that negatively impact both the price-discovery and trading process for the vast bulk of the Nasdaq market community.

Based on the above, Nasdaq believes this proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act [4] in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–23 and should be submitted by June 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–13055 Filed 5–23–02; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78*o*–3(b)(6).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45960; File No. SR–NASD–2002–63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Proposed Fees for the Trade Reporting and Compliance Engine (TRACE) for Corporate Bonds

May 17, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD submitted Amendment No. 1 to the proposed rule change on May 16, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is filing with the Commission a proposed structure for fees to be charged in connection with the NASD's creation of a corporate bond trade reporting and transaction dissemination facility. The facility is currently referred to as the Trade Reporting and Compliance Engine or ''TRACE.'' TRACE replaces Nasdaq's Fixed Income Pricing System (''FIPS''). The proposed rule change is in addition to the NASD's Rule 6200 Series for TRACE.[4] The current text of NASD Rule 7010 (k) Fixed Income Pricing System (FIPS) will be deleted in its entirety and replaced by the proposed new TRACE fees. Below is the text of the proposed rule change. Proposed new language is in *italics,* proposed deletions are in [brackets].

* * * * *

Rule 7010. System Services

[(k) Fixed Income Pricing System (FIPS)]

[(1) The following charges shall apply to the operation of Full Function and Limited Function FIPS terminals. Charges for Full Function and Limited Function FIPS terminals will also

[3] *See* letter from Barabara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), dated May 16, 2002.

[4] The Commission approved the Rule 6200 Series on January 23, 2001. *See* SR–NASD–99–65 and Amendments No. 1 through 4 thereto, approved in Securities Exchange Act Release NO. 43873 (January 23, 2001), 66 FR 811 (January 29, 2001) (''TRACE Approval Order''). On December 21, 2001, the NASD filed SR–NASD–2001–91 to establish July 1, 2002 as the effective date of the Rule 6200 Series (*see* SR–NASD–2001–91). On January 3, 2002, the Commission issued a notice that the proposed rule change had become effective on filing. Securities Exchange Act Release No. 45229 (January 3, 2002), 67 FR 1255 (January 9, 2002). On April 3, 2002, the NASD filed SR–NASD–2002–46 to make certain technical amendments to the new Rule 6200 Series.

include equipment related charges as detailed in Rule 7020.

(A) Full Function FIPS terminals:

$1,000/month for the first terminal plus $350/month for each additional terminal.

Full Function FIPS terminals provide access to the full range of quotation and trade reporting capabilities of FIPS through dedicated communication circuits.

(B) Limited Function FIPS terminals:

$300/month for each terminal plus dial-up communication charges assessed based on actual costs incurred.

Limited Function FIPS terminals provide access to the full range of quotation and trade reporting capabilities of FIPS through a dial-up service.]

[(2) For each transaction in a high-yield security that is reportable to the Association pursuant to Rule 6240 of the FIPS Rules, there shall be a $1 charge assessed against the member responsible for reporting the transaction under paragraphs (a)(3) or (b)(3) thereof.]

[(3) There shall be a $50 monthly charge assessed against members using the FIPS service desk. Pursuant to Rule 6240(a)(2)(B), members that do not have access to a FIPS terminal and average five or fewer trades per day in high yield securities, inclusive of FIPS securities, during the previous calendar quarter may utilize the FIPS service desk to report trades in high yield bonds effected in the over-the-counter market.]

[(4) Bond Quotation Data Service (BQDS)

(A) Full BQDS

The charge to be paid by the subscriber for each interrogation or display device receiving Full BQDS information is $50 per month. Full BQDS information includes the bids and offers of all FIPS participants registered in each FIPS security, the inside bid/ask quotation for each FIPS security, and hourly summary transaction information on FIPS securities.

(B) Limited BQDS

The charge to be paid by the subscriber for each interrogation or display device receiving Limited BQDS information is $5 per month. Limited BQDS information includes the inside bid/ask quotation for each FIPS security and hourly summary transaction information of FIPS securities.]

Rule 7010(k) Trade Reporting and Compliance Engine (TRACE)[5]

The following charges shall be paid by participants for the use of the Trade Reporting and Compliance Engine (''TRACE''):

System fees	*Transaction reporting fees*	*Market data fees*
Web Browser Access: $85/month for 1 user ID; $75/month for 2–9 user IDs; $70/month for 2–10+ user IDs.	*Trades up to and including $0 to $200,000 par value—$0.50/trade; Trades up to and including $201,000 to $999,999 par value—$0.0025 times the number of bonds traded/trade; Trades of $1,000,000 par value or more—$2.50/trade.*	*BTDS Professional Display—$60/month per terminal.*
CTCI—$25/month/line	*Cancel/Correct—$3/trade*	*BTDS Internal Usage Authorization—$500/month per organization.*
Third Party—$25/month	*''As of'' Trade Late—$3/trade*	*BTDS External Usage Authorization—$1,000/month per organization.*
PDN Adminsitrative—$100/month/line	*Browse & Query—$0.05 after first page*	*BTDS Non-Professional Display—$1/month per terminal.*
		Daily List Fax—$15/month per fax number/addressee.

(1) System Related Fees. There are three methods by which a member may report corporate bond transactions that are reportable to the Association pursuant to the Rule 6200 Series. A member may choose among the following methods to report data to the Association: (a) a TRACE web browser (either over the Internet or a secure private data network (''PDN'')); (b) a Computer-to-Computer Interface (''CTCI'') (either one dedicated solely to TRACE or a multi-purpose line); or (c) a third-party reporting intermediary. Fees will be charged based on the reporting methodology selected by the member.

(A) *Web Browser Access*

The charge to be paid by a member that elects to report TRACE data to the Association via a TRACE web browser shall be as follows: for the first user ID registered, a charge of $85 per month; for the next two through nine user IDs registered, a charge of $75 per month, per such additional user ID; and for ten or more user IDs registered, a charge of $70 per month, per user ID from two to ten or more. In addition, a member that elects to report TRACE data to the Association via a web browser over a secure PDN rather than over the Internet shall pay an additional administrative charge of $100 per month, per line.[6]

(B) *Computer-to-Computer Interface Access*

The charge to be paid by a member that elects to report TRACE data to the Association via a CTCI line shall be $25 per month, per line, regardless of whether the line is or is not dedicated exclusively for TRACE.[7]

(C) *Third Party Access—Indirect Reporting*

A member may elect to report TRACE data indirectly to the Association via third-party reporting intermediaries, such as vendors, service bureaus, clearing firms, or the National Securities Clearing Corporation (''NSCC''). The charge to be paid by a member shall be $25 per month, per firm. Nothing in this Rule shall prevent such third-party intermediaries from charging additional fees for their services.

(2) *Transaction Reporting Fees*

For each transaction in corporate bonds that is reportable to the Association pursuant to the Rule 6200

[5] In an unrelated filing with the Commission, the NASD filed notice of proposed rule changes relating to the separation of Nasdaq from the NASD and the establishment of the NASD Alternative Display Facility. Such filing proposes to modify certain NASD rules to effectuate this separation. The Rule 7000 Series is proposed to be modified as part of that rule filing. Such filing may require that subsection (k) referenced herein be renumbered to be consistent with the modifications proposed therein. *See* SR–NASD–2991–90 filed on December 7, 2001; *see also,* SR–NASD–2002–28 filed on February 20, 2002.

[6] *Charges that may be imposed by third parties, such as network providers, are not included in these fees.*

[7] *Charges that may be imposed by third parties, such as CTCI line providers, are not included in these fees.*

Series, the following charges shall be assessed against the member responsible for reporting the transaction:

(A) *Trade Reporting Fee*

A member shall be charged a Trade Reporting Fee based upon a sliding scale ranging from $0.50 to $2.50 per transaction based on the size of the reported transaction. Trades up to and including $200,000 par value will be charged a $0.50 fee per trade; trades between $201,000 par value and $999,000 par value will be charged a fee of $0.0025 multiplied by the number of bonds traded ; and trades of $1,000,000 par value or more will be charged a fee of $2.50 per trade.

(B) *Cancel or Correct Trade Fee*

A member shall be charged a Cancel or Correct Trade Fee of $3.00 per canceled or corrected transaction. To provide firms with time to adjust to the new reporting system, the Cancel or Correct Trade Fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE.

(C) ''*As of*'' *Trade Late Fee*

A member shall be charged an ''*As of*'' *Trade Late Fee of $3.00 per transaction for those transactions that are not timely reported* ''*As of*'' *as required by these rules. To provide firms with time to adjust to the new reporting system, the* ''*As of*'' *Trade Late Fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE.*

(D) *Browse and Query Fee*

Members may review their own previously reported transaction data through a Browse and Query function. A member shall be charged $0.05 for each returned page of the query beyond the first page.

(3) *Market Data Fees*

Professionals and non-professionals may subscribe to receive real-time TRACE data disseminated by the Association in one or more of the following ways for the charges specified. Members, vendors and other redistributors shall be required to execute appropriate agreements with the Association.

(A) *Professional Fees. Professionals may subscribe for the following:*

(i) *Bond Trade Dissemination Service (*''*BTDS*''*) Professional Display Fee of $60 per month, per terminal charge for each interrogation or display device receiving real-time TRACE transaction data.*

(ii) *BTDS Internal Usage Authorization Fee of $500 per month, per organization charge for internal dissemination of real-time TRACE transaction data used in one or more of the following ways: internal operational and processing systems, internal monitoring and surveillance systems, internal price validation, internal portfolio valuation services, internal analytical programs leading to purchase/sale or other trading decisions, and other related activities.*[8]

(iii) *BTDS External Usage Authorization Fee of $1,000 per month, per organization charge for dissemination of real-time TRACE transaction data used in one or more of the following ways: repackaging of market data for delivery and dissemination outside the organization, such as indices or other derivative products.*[9]

(A) *Non-Professional Fees*

The charge to be paid by a non-professional for each terminal receiving all or any portion of real-time TRACE transaction data disseminated through TRACE shall be $1.00 per month, per terminal.

(B) *Non-Professional Defined*

A ''*non-professional*'' *is a natural person who is neither:*

(i) *registered nor qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; or*

(ii) *engaged as an* ''*investment adviser*'' *as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act);*

(iii) *employed by a bank, insurance company or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; nor*

(iv) *engaged in, or has the intention to engage in, any redistribution of all or any portion of the information disseminated through TRACE.*

[8] *Under this service, real-time TRACE transaction data may not be used in any interrogation display devices, any systems that permit end users to determine individual transaction pricing in real-time, or disseminated to any external source.*

[9] *Under this service, real-time TRACE transaction data may not be used in any interrogation display devices or any systems that permit end users to determine individual transaction pricing in real-time.*

(4) *Daily List Fax Service*

Each subscriber for the Association's Daily List Fax Service shall be charged $15 per month, per fax number/addressee.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD proposed, and the Commission approved, in a separate filing with the Commission, the adoption of the new Rule 6200 Series relating to the creation of TRACE and the elimination of Nasdaq's FIPS high yield reporting system.[10] In this filing, the NASD is proposing to establish fees for participants and users of the TRACE facility and to rescind the FIPS fees.

Background

In 1998, the SEC, in recognition of the relative lack of transparency in the corporate debt market, called upon the NASD to do the following: (1) Adopt rules requiring NASD members to report all transactions in corporate bonds to the NASD and to develop systems to receive and distribute transaction prices on an immediate basis; (2) create a database of transactions in corporate bonds to enable regulators to take a proactive role in supervising the corporate debt market; and (3) create a surveillance program, in conjunction with the development of a database to better detect fraud and foster investor confidence in the fairness of the corporate bond market.

Since the SEC mandate, the NASD has developed TRACE, which is a reporting facility developed by the NASD that, among other things, accommodates reporting and dissemination of transaction reports in TRACE-eligible

[10] *See supra* note 4.

securities.[11] The NASD represents that, after extensive consultation with industry professionals, it filed SR–NASD–99–65 [12], and amendments thereto to implement the TRACE system.

Participation in TRACE is mandatory for all NASD members that transact business in eligible corporate debt securities. Market participants have specified obligations for the use of the TRACE system when entering, or correcting trade details on TRACE. Under proposed rule 6230(a), SR–NASD–2002–46, participants are obligated to report transaction information within one hour and fifteen minutes after trade execution. The participant may use, among other means, a web browser (either over the Internet or a private data network (''PDN'')), Computer-to-Computer Interface (''CTCI''), or a third-party intermediary.[13]

The NASD represents that the purpose of the proposed rule change is to establish a TRACE fee structure. The NASD represents that developmental costs of TRACE, to date, are approximately $7.2 million. In addition, the NASD represents that total operating costs for the TRACE system are estimated to be approximately $6 million annually. The NASD represents that the proposed fees are intended to help the NASD recover the development costs of the new system, fund ongoing operational costs, and fund the regulatory activities necessary for surveillance of the market, all with a view towards making TRACE financially self-sustaining.

The proposed fees are divided into three general categories: (1) System fees paid by member firms based on the method chosen by the member to report corporate bond transactions to the NASD (members will have several options on how to report trades and the fees will vary accordingly); (2) transaction reporting fees paid by members to file trade reports and cancel or correct trade reports; and (3) market data fees paid by members and non-members that use or distribute the data collected through the TRACE system and disseminated by the NASD.

System Fees. The NASD states that TRACE offers participants multiple options to comply with the transaction reporting requirements. The NASD proposes to charge fees to members who use the TRACE system based on the method the member selects to input transaction information to the NASD. Under the proposed rules, members will have three means by which to input transaction information directly to the NASD: (1) A web browser through the Internet, which will be useful primarily for low-volume firms; (2) a web browser using a PDN; or (3) a CTCI, which the Association anticipates will be used primarily by high volume firms. Members may also choose to report transactions indirectly to the NASD through third parties, such as vendors, service bureaus, clearing firms, or the NSCC, which will in turn report to the NASD through one of the approved methods described above.

Members may report transaction information manually through a web browser using their own Internet provider.[14] Members using a web browser will be charged a monthly access fee as follows: for the first user ID registered, a charge of $85 per month; for the next two through nine user IDs registered, a charge of $75 per month, per such additional user ID; and for ten or more user IDs registered, a charge of $70 per month, per user ID from two to ten or more. Members reporting through a web browser may elect to report transaction information through a PDN that is owned and operated by Nasdaq's designated network provider, which is currently WorldCom, Inc. Members choosing to report transaction information directly to the NASD using a PDN will be charged a $100 per line administration fee per month by the NASD. Members should be aware that this fee does not include fees that will be charged by Nasdaq for services provided by its designated network provider that will be billed directly by Nasdaq.

Members also may report transaction data through the CTCI operated by Nasdaq for most of its transaction reporting facilities. Nasdaq currently leases dedicated lines from WorldCom, Inc. and provides direct connection from a member firm to the NASD. The NASD monthly charge for reporting through a CTCI is $25 per month, per line, whether or not such line is used exclusively for TRACE, and does not include Nasdaq charges for its designated network provider.

The NASD believes the fees set forth above are reasonably related to the costs of developing the new facility and to meeting the estimated operating expenses of the TRACE system. The NASD represents that the fees are also designed to fund the regulatory activities necessary to survey the market. In addition, the NASD believes the proposed fees are non-discriminatory because members may select the technology link that best suits their particular needs. Further, the NASD states that the proposed fees are consistent with similar fees that are being charged by other transaction reporting facilities.

Transaction Reporting Fees. Members will be charged fees to file transaction reports and cancel or correct transaction reports. The NASD proposes to charge a trade reporting fee using a sliding scale, based upon the size of the transaction reported, in an effort to distribute the fees more equitably between retail oriented firms and institutionally oriented firms. A member shall be charged a Trade Reporting Fee on a sliding scale ranging from $0.50 to $2.50 per trade based on the size of the reported transaction. For trades up to and including $200,000 par value, members will be charged a fee of $0.50 per trade; for trades between $201,000 par value and $999,000 par value, members will be charged a fee of $0.0025 multiplied by the number of bonds traded; and for trades of $1,000,000 par value or more, members will be charged a fee of $2.50 per trade.

The NASD proposes to charge a cancel or correct trade fee of $3.00 per trade. The NASD also proposes to charge an ''As of'' trade late fee of $3.00 per trade. Under proposed rule 6230(a)(2), SR–NASD–2002–46, a transaction that is executed after the close of the market must be reported within the first 1 hour and 15 minutes after the open of the market on the following business day to be reported on time ''As of.'' [15] A member shall be charged an ''As of'' trade late fee of $3.00 per transaction for those transactions reported beyond such time frame. To provide firms time to adjust to the new reporting system, the cancel or correct trade fee and ''As of'' trade late fee will not be charged until the later of October 1, 2002 or 90 days after the effective date of TRACE. In addition, NASD proposes a browse and query fee of $0.05 for each returned page of query beyond the first page. This feature will allow members to review their own previously reported data.

In order to standardize corporate bond reporting obligations and minimize industry technology burdens, NASD has

[11] The term ''TRACE-eligible security'' is defined in Rule 6210(a) of the TRACE rules.

[12] *See* Securities Exchange Act Release No. 43616; File No. SR–NASD–99–65.

[13] *See* SR–NASD–2002–46. In such filing, the NASD has proposed to increase the reporting time from 1 hour to 1 hour and 15 minutes.

[14] The cost of the Internet service is not included in NASD's fee. A member must obtain Internet access independently.

[15] As noted previously, the NASD has proposed generally to amend the reporting period from 1 hour to 1 hour and 15 minutes, and this period would apply to transctions executed after the close of the market and reported the next morning.

proposed (as part of the TRACE filing with the Commission) the elimination of the separate FIPS system and its related rules and costs. The TRACE trade reporting fee will replace the flat fee of $1.00 per trade currently charged to report corporate bonds through FIPS. The NASD believes the proposed TRACE trade reporting fee structure, which replaces the FIPS flat fee structure with a sliding scale, is reasonable and more equitably distributes the fees between retail-oriented firms and institutional-oriented firms. The NASD represents that the fees are designed to help the NASD recover its development costs, estimated operating costs, and the costs of related regulatory activities. In addition, the cancel or correct trade fee and the ''As of'' trade late fee are proposed to encourage the correct reporting of transaction data, as well as to cover the additional costs incurred by the NASD to correct the historical record and notify members and the vendor community. The NASD notes these fees are consistent with those charged by other self-regulatory organizations for reporting requirements.

Market Data Fees. The NASD represents that it is committed to delivering real-time market data from the TRACE system to market participants in the broadest and most efficient manner possible. NASD proposes to charge market professionals who subscribe to receive real-time market data as follows: (i) BTDS Professional Display Fee of $60 per month, per terminal charge for each interrogation or display device receiving real-time TRACE transaction data; (ii) BTDS Internal Usage Authorization Fee of $500 per month, per organization charge for internal dissemination of real-time TRACE transaction data used in one or more of the following ways: internal operational and processing systems, internal monitoring and surveillance systems, internal price validation, internal portfolio valuation services, internal analytical programs leading to purchase/sale or other trading decisions, and other related activities; [16] (iii) BTDS External Usage Authorization Fee of $1,000 per month, per organization charge for dissemination of real-time TRACE transaction data used in one or more of the following ways: repackaging of market data for delivery and dissemination outside the organization, such as indices or other derivative products.[17] Non-professionals that subscribe to receive real-time TRACE transaction data will be charged $1.00 per month, per terminal. In addition, the NASD proposes a fee of $15.00 per month, per subscriber for the daily list fax service that will contain all of the daily additions, deletions, modifications to the list of TRACE-eligible securities.

The NASD believes that the proposed market data fees are reasonable. The NASD represents that the various fee levels of proposed market data fees are intended to provide market participants with the flexibility to select the usage level that best meets their needs. In determining the proposed market data fees, the NASD represents that its staff reviewed comparable industry fees for market data. The NASD states that the proposed market data fees are designed to allow the NASD to recover its developmental and operational costs of the TRACE system and the costs of related regulatory activities, while still allowing vendors to resell the data at competitive prices.

Market participants and others who wish to receive real-time TRACE data directly from the NASD will be required to enter into appropriate agreements with the NASD. For example, a vendor or broker/dealer firm that wishes to distribute TRACE real-time data externally will be required to enter into a vendor agreement, which among other things will standardize display facilities and require the vendor to collect specified dissemination fees from its end users for remittance to the NASD. Vendors or broker/dealer firms that wish to receive real-time TRACE data directly from the NASD and subsequently disseminate real-time TRACE data internally will also be required to execute agreements with the NASD, which among other things, will require firms to represent that the TRACE real-time data will not be disseminated externally.

In determining the proposed fees the NASD represents that its staff reviewed the existing FIPS fees, Nasdaq fees, and other comparable industry fees. The NASD states that its staff also consulted with members of the industry. In addition, the NASD established the Bond Transaction Reporting Committee (''BTRC'') that has ten members, one-half of whom are recommended by the NASD, and the other half of whom are recommended by The Bond Market Association. The NASD states that its staff presented the proposed TRACE fees to the BTRC for additional industry input, and modified certain aspects of the initial fee proposal in response to concerns raised by the BTRC. The NASD represents that, with such modifications, the BTRC voted to approve the proposed TRACE fees, subject to a commitment by the NASD staff to reassess the proposed TRACE fees after TRACE is effective.[18] Such reassessment may result in certain fees being reduced or certain new fees being assessed based on the actual usage of the new system. The NASD represents that the BTRC recommended that the NASD staff review the TRACE fees based on actual TRACE data collected within the first six months of the system's operation and adjust the fees if actual revenues are substantially greater than projected.[19]

The NASD represents that, as part of the initiative by the Commission to create price transparency in the corporate bond market, the NASD has worked diligently to develop the TRACE system. Overall, the NASD believes that the proposed fees are necessary to achieve a practical, market-driven system for processing and disseminating reliable and uniform corporate bond data. The NASD believes that the TRACE system will allow the NASD to take a proactive role in supervising the corporate bond market and promote investor confidence in the fairness of the corporate bond market generally.

Based on the above, the NASD believes the proposed rule change is consistent with the provisions of Section 15A(b)(5) [20] of the Act in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and other persons using any facility or system which the association operates or controls.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the

[16] Under this service, real-time TRACE transaction data may not be used in any interrogation display devices, any systems that permit end users to determine individual transaction pricing in real-time, or disseminated to any external source.

[17] Under this service, real-time TRACE transaction data may not be used in any interrogation display devices or any systems that permit end users to determine individual transaction pricing in real-time.

[18] The NASD represents that the BTRC did not vote on or approve the Internal Usage Authorization Fee and the External Usage Authorization Fee because the committee did not have sufficient time prior to this filing to appropriately consider these fees.

[19] Generally, the staff believes that a reassessment of the proposed fee structure would not be valid unless it were based on at least 6 months of historical TRACE data (or full TRACE operatiosn and the related revenue stream and costs). However, with respect to certain fees, the Association may require additional historical data, or, conversely, may be able to reassess fees based on data collected over a shorter period. In addition, based on the data collected, the NASD may assess certain internal dissemination fees, including index fees, administration fees, or distributor fees.

[20] 15 U.S.C. 78o–3(b)(5).

provisions of Section 15A(b)(6)[21] of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Based on a mandate by the SEC, the Association has developed a corporate bond reporting facility to create transparency in the debt market and allow for surveillance to better detect fraud and foster investor confidence in the fairness of the corporate bond market. In addition, the NASD believes that the proposed rule is consistent with Section 15A(b)(5)[22] of the Act which requires that a national securities association have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using any facility or system which the association operates or controls.[23]

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the NASD believes that the proposal allows for competition in the collection of trade reports, and limits the NASD's role to: (1) Collecting trade reports directly only from members that choose to report directly to the NASD; (2) consolidating trade reports for regulatory purposes; and (3) disseminating the consolidated data to broker-dealers and those interested in reselling the data but not competing in the market for resale of these data. The NASD notes that the proposed fees which the NASD is seeking to impose for performing these functions are subject to Commission review and approval under the standards set forth for these purposes under Sections 11A and 15A of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action[24]

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–63 and should be submitted by June 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–13056 Filed 5–23–02; 8:45 am]

BILLING CODE 8010–01–P

[21] 15 U.S.C. 78o–3(b)(6).

[22] 15 U.S.C. 78o–3(b)(5).

[23] The NASD represents that it has generally submitted proposed rule changes relating to member dues, fees and charges pursuant to Rule 19b–4(f)(2) of the Act and Section 19(b)(3)(A) thereunder which would make such a proposed rule change effective immediately upon filing with the Commission. However, because the TRACE system is new, the NASD is recommending that the Commission solicit comments on the proposed rule change.

[24] The NASD proposes to make the proposed rule change effective on the same date that the NASD Rule 6200 Series relating to TRACE is made effective and FIPS is eliminated.

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45965; File No. SR–NASD–2002–56]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Establishing a Uniform Process for Opening Daily Trading in Nasdaq's Upcoming SuperMontage System

May 20, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On May 17, 2002, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD, through Nasdaq, proposes to establish a uniform process for opening daily trading in Nasdaq's future Order Display and Collector Facility (''SuperMontage'').

The text of the proposed rule change, as amended, is available at the Office of the Secretary, Nasdaq and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This notice, representing Amendment No 1, replaces the original Rule 19b–4 filing in its entirety.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its ongoing preparation for the launch of SuperMontage, Nasdaq is engaging in a continuing review of the system's functionality and rules with a view to constant improvement. As a result of this review, and in consultation with industry professionals, Nasdaq has determined to alter the method originally approved for opening daily trading in SuperMontage. Through a combination of rules and system processing, Nasdaq's proposed new opening process proposes to cure, and thereafter prevent, locked and crossed market conditions immediately prior to the 9:30 a.m. market open, while allowing the continued execution of pre-market priced orders during that same time period.

Specifically, Nasdaq proposes to:

(1) Clarify that the system will accept market orders prior to 9:30 a.m. Eastern Time;

(2) Modify the opening process by providing for the automatic clearing of locked/crossed quotes beginning at 9:29:30 a.m. Eastern Time, and by matching off of locked/crossed quotes between the most aggressive orders, at the price of the newest of those orders; and

(3) Amend its Trade-or-Move Rule to conform to the changes in the opening process.

a. Expansion of Order Entry During Pre-Market Hours

Currently, the SuperMontage system rules do not explicitly permit the entry of Non-Directed market orders prior to 9:30 a.m. Eastern Time. Under the approved SuperMontage rules, market participants may enter Non-Directed limit orders prior to the market open, subject to certain qualifiers.[4] Nasdaq proposes to clarify that *all* market participants in SuperMontage may enter both limit orders and market orders prior to 9:30 a.m. Market orders and priced orders designated as IOC, will be held in queue until 9:30 a.m., at which time they will be executed or returned back to the entering firm if non-marketable.

b. SuperMontage Pre-Open Clearing of Locking and Crossing Quotes and Orders

Currently, SuperMontage's opening process resolves locked and crossed markets by pairing off the oldest in time sell quote/order with the oldest in time buy quote/order, and then executing the buying/selling interest at the price of the oldest quote/order. Under approved SuperMontage rules, this process begins at 9:30 a.m. Eastern Time, and is repeated until an unlocked and uncrossed inside market in Nasdaq is generated.

Nasdaq proposes to change and streamline the above process as follows. At 9:29:30 a.m. Eastern Time, the system will begin an automated process to clear any locked or crossed markets that then exists, using a new matching and pricing formula. First, the system will pair off the most aggressively priced buy quote/order against the most aggressively priced sell quote/orders. Once this ''best-priced pair'' is determined, the system will execute the two identified orders at the price of the newer order until the older order is fully satisfied. Nasdaq represents that, in essence, price improvement accrues to the older order. If the displayed size becomes exhausted at that price level, SuperMontage will continue to execute against available reserve size at that price level. This process will be repeated until an unlocked and uncrossed market results. Non-Attributable Orders that are displayed under SIZE will also participate in this process and will be subject to execution logic described above.

Once the lock/cross is cleared, any additional locking or crossing quotes/orders entered between 9:29:30 a.m. and 9:30:00 a.m. will be turned into an order and will be executed against the quote/order in Nasdaq that it would lock/cross. The execution will occur at the price of the quote/order that would be locked/crossed consistent with the locking/crossing process applicable during market hours.[5] Non-Attributable Orders that are displayed under SIZE will also participate in this process and will be subject to execution logic described above.

Since these trades will be executed prior to the 9:30 a.m. market open, these trades will be designated as ''.T'' to reflect that they were executed outside of normal market hours.[6] Nasdaq notes that if a market maker or ECN receives an order and its customer has indicated that it does not wish the order to be executed prior to 9:30 a.m., the market participant can enter the order into SuperMontage prior to the open but enter it as either a market order or as an IOC limit order. These orders would not drive a quote, would not participate in the pre-market lock/cross clearing process, and would be held in queue until 9:30 a.m., at which time they will be executed (or canceled if not marketable).

c. Modifications to ''Trade-or-Move'' Rule Timeframes

Nasdaq proposes to amend its Trade-or-Move Rule to reflect that the system will begin the unlocking/uncrossing process at 9:29:30 a.m., thus market participants would be required to send Trade-or-Move Directed Orders[7] between 9:20 a.m. and 9:29:29 a.m. (as opposed to 9:29:59 a.m.). Under the proposal the Trade-or-Move will operate as follows. Market participants will have an obligation to send Trade-or-Move Directed Orders beginning at 9:20:00 a.m. to all quotes they would lock/cross (except for SIZE) using a SuperMontage Directed Order. Currently, a market participant will be required to send a Trade-or-Move Directed Order to the party it would lock/cross contemporaneous to entering an Attributable quote/order or Non-Attributable quote/order into SIZE.[8] Thus, under the proposal if a market participant would actively lock or cross the market by posting an Attributable quote/order or Non-Attributable quote/order in SIZE during 9:20 a.m. and

---

[4] Order-entry firms may enter Non-Directed limit (priced) orders before 9:30 a.m. Eastern Time but these orders must be designated as Immediate or Cancel (''IOC''). Quoting market participants (*e.g.*, registered market makers and ECNs in a security) may enter limit orders, but are not required to designate them exclusively as IOC orders. Accordingly, limit orders from quoting market participants that are not IOC are displayed in the Nasdaq system both during market hours and the pre-market period.

[5] *See* NASD Rule 4710(b)(3).

[6] If at any time a market participant enters a quote that would lock/cross the market in the SuperMontage, the Nasdaq system will send the market participant a warning message. If the market participant chooses to override the warning message, the quote will participate in the unlocking/uncrossing process described above. This is, a locking/crossing quote entered between 9:20 a.m. and 9:29:30 a.m. will be turned into an order and become executable at 9:29:30 a.m. A locking/crossing quote entered at or after 9:29:30 a.m., but before market close, will be turned into an order that will be subject to immediate execution. Quotes entered at or after market close will receive the warning message but will not be subject to execution until 9:29:30 a.m. the following market day.

[7] Nasdaq proposes to change the term ''Trade-or-Move Message'' to ''Trade-or-Move Directed Order.'' *See* proposed NASD Rule 4613(e)(1)(C).

[8] Under another proposal pending before the Commission, ECNs would be required to send a Trade-or-Move Message before entering a locking or crossing quotation and market makers would be required to send a Trade-or-Move Message immediately after entering a locking or crossing quote. *See* Securities Exchange Act Release No. 45508 (March 5, 2002), 67 FR 10956 (March 11, 2002) (Notice of Amendment Nos. 2 and 3 for File No. SR–NASD–00–76). This proposal would not alter that aspect of the Trade-or-Move rule, if approved.

9:29:30 a.m., that market participant will be required to send a Trade-or-Move Directed Order to the party it would lock or cross. However, if at or after 9:20 a.m. there is an order being displayed in SIZE, a market participant will not be obligated to send a Trade-or-Move Directed Order to SIZE if they would actively lock/cross SIZE because the system currently cannot route a Trade-or-Move Directed Order to the market participant representing the Non-Attributed Order behind SIZE.[9] As noted above, Non-Attributable Orders that are represented under SIZE will participate in the lock/cross clearing process that commences at 9:29:30 a.m., and thus will be subject to execution prior to the market's open.

Accordingly, Nasdaq believes that its proposed process will significantly improve the Nasdaq market opening by ensuring that quotes in Nasdaq securities are not locked or crossed at the start of normal trading. In addition, Nasdaq believes that its proposed approach of basing pre-market executions on the prices of individual quotes/orders provides maximum flexibility for market participants to price and potentially execute their own trading interest, while still maintaining an orderly market going into the open.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[10] in general and with Section 15A(b)(6) of the Act,[11] in particular, in that the proposal is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in processing information with respect to and facilitating transactions in securities, as well as removing impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Nasdaq neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2002–56 and should be submitted by June 14, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–13101 Filed 5–23–02; 8:45 am]

BILLING CODE 8010–01–P

[9] The Commission notes that Nasdaq is developing the capability to send a Trade-or-Move Directed Order to SIZE and would have to submit a proposed rule change to the Commission to implement this as a SuperMontage feature.

[10] 15 U.S.C. 78o–3.

[11] 15 U.S.C. 78o–3(b)(6).

[12] Nasdaq has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act to approve the proposed rule change prior to the 30th day after publication in the **Federal Register**. *See* Amendment No. 1, *supra* note 3.

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before June 24, 2002. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Economic Impact Survey of SBA Technical Assistance Clients.

No: 2214.

Frequency: On Occasion.

Description of Respondents: Small Business Client (small business owners & employees, prospective entrepreneurs and other students of enterprise).

Responses: 17,000.

Annual Burden: 2,226.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 02–13086 Filed 5–23–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3414]

State of New York

As a result of the President's major disaster declaration on May 16, 2002, I find that Clinton and Essex Counties in the State of New York constitute a disaster area due to damages caused by an earthquake occurring on April 20, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 15, 2002 and for economic injury until the close of business on February 17, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Franklin, Hamilton, Warren and Washington Counties in the State of New York; and Addison, Chittenden and Grand Isle Counties in the State of Vermont.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (Including Non-Profit Organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 341402. For economic injury the number is 9P7600 for New York; and 9P7700 for Vermont.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 16, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–13087 Filed 5–23–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4025]

Bureau of Educational and Cultural Affairs; 60-Day Notice of Proposed Information Collection: Form DS–3036, Exchange Visitor Program Application and Form DS–3037, Update of Information on Exchange Visitor Program Sponsor; OMB Control Number 1405–0120

ACTION: Notice.

SUMMARY: The Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs; 60-Day Notice of Proposed Information Collection: Exchange Visitor Program Application—Form DS–3036; Update of Information on Exchange Visitor Program Sponsor—Form DS–3037. OMB Approval Number 1405–0120.

Action: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice. The following summarizes the information collection proposal submitted to OMB:

Type of Request: Comment.

Originating Office: Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs.

Title of Information Collection: Exchange Visitor Program Application—Form DS–3036; Update of Information on Exchange Visitor Program Sponsor—DS–3037.

Frequency: Form DS–3036—Approximately 150 new organizations submit applications to be designated as Exchange Visitor Program sponsors each year. DS–3037—The Department has approximately 1500 currently designated sponsors. It is estimated that each designated organization makes two submissions annually to update information on their Program or to order Form DS–2019, brochures and supplies to administer their Program.

Form Number: Forms DS–3036 and DS–3037.

Respondents: U.S. government, and public and private organizations wishing to become designated sponsors and Department of State designated sponsors.

Estimated Number of Respondents: DS–3036—150; DS–3037—3,000.

Average Hours per Response: DS–3036—20 minutes; DS–3037—8 hours.

Total Estimated Burden: DS–3036—1200 hours; DS–3037—1,000 hours.

Public comments are being solicited to permit the Department to:

—Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the Department, including whether the proposed information collection is necessary for the proper performance of the functions of the Department.

• Evaluate the accuracy of the Department's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

—Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Sally J. Lawrence, Chief, Private Sector Division, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, U.S. Department of State, 301 Fourth Street, SW, Room 734, Washington, DC 20547; telephone 202–401–9810. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: April 4, 2002.

James D. Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–13144 Filed 5–23–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3584]

Proposed Modernization of the Coast Guard National Distress and Response System

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent to prepare a Supplemental Program Environmental Assessment.

SUMMARY: The U.S. Coast Guard intends to prepare a Supplemental Program Environmental Assessment (SPEA) for the National Distress and Response System Modernization Project (NDRSMP). The SPEA will supplement our July 1998 Programmatic Environmental Assessment (PEA) with respect to modernizing and deploying the National Distress and Response System (NDRS) and it will examine reasonable alternatives for the deployment of dual mode VHF/UHF radio equipment to either an existing NDS antenna tower site, antenna tower space leased from a commercial provider, or new construction of an antenna tower site. We are requesting early public input on these alternatives and the potential for environmental impacts as a result of implementing them.

DATES: Comments and related material must reach the Docket Management Facility on or before June 24, 2002.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–1998–3584), U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

In choosing among these means, please give due regard to recent difficulties and delays associated with delivery of mail through the U.S. Postal Service to Federal facilities.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as this notice, will become part of this docket and will be available for inspection or copying at Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Web Site at *http://www.dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, the proposed project, or the associated assessment, call Donna M. Meyer, Environmental Program Manager, National Distress and Response System Modernization Project, U.S. Coast Guard Headquarters, 202–267–1496 or e-mail her at *dmeyer@comdt.uscg.mil.* For questions on viewing or submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation, 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related material on our Supplemental Program Environmental Assessment. If you do so, please include your name and address, identify the docket number for this notice (USCG–1998–3584), and provide background support for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. When submitting by mail or hand delivery, submit your comments or material in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know if the comments and/or material were received by the facility, please enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments and material received during the comment period.

Public Hearing

We do not now plan to hold a public hearing. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid us in preparing the SPEA, and would significantly aid in our environmental review and analysis for the proposal, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background

The National Distress and Response System forms the backbone of the Coast Guard's Short Range Communication System (SRCS) that supports Coast Guard Activity, Group, Marine Safety Office (MSO), Vessel Traffic Service (VTS), Air Station, Cutter and Station operations. As part of the SRCS, the NDRS incorporates the use of VHF–FM radios to provide two-way voice communications coverage for the majority of Coast Guard missions in coastal areas and navigable waterways where commercial and recreational traffic exists. The system, consisting of approximately 300 remotely controlled VHF transceiver sites, monitors the international VHF–FM maritime distress frequency (Channel 16), and is the primary command and control network to coordinate Coast Guard search and rescue (SAR) response activities. The secondary function is to provide command, control, and communications for the Coast Guard missions of national security, maritime safety, law enforcement, and marine environmental protection.

In July 1998, the Coast Guard published a Programmatic Environmental Assessment that considered general concepts to modernize the current obsolete and nonstandard system. The alternatives we considered included:

Alternative A—Status quo.

Alternative B—Upgrade status quo by systematically upgrading the existing network with modern analog transceivers. This alternative replaces old equipment with new equipment and adds additional radio capability. It is expected this alternative would require additional antenna sites.

Alternative C—Dual mode VHF and/or UHF network replaces existing analog network with dual mode (digital and analog) transceivers. It is expected this alternative would require additional antenna sites. And,

Alternative D—Multi-mode: Satellite, cellular, VHF and/or UHF network. This alternative replaces the existing network with multi-mode equipment that utilizes satellite, cellular, and VHF/UHF communications. It is expected that this alternative would require additional antenna sites.

Alternatives B, C, and D would all require approximately the same number of additional antenna sites. Since 1998, new circumstances and relevant information regarding the deployment of the system to an existing antenna site, or leasing an antenna site, or constructing a new antenna site as well as the Coast Guard's preference for

Alternative C, call for a Supplemental Program Environmental Assessment to consider any environmental impacts that were previously not taken into account.

Supplemental Programmatic Environmental Assessment

Pursuant to the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR parts 1500–1508), we intend to prepare a Supplemental Program Environmental Assessment for the National Distress and Response System Modernization Project.

Information, data, and comments obtained throughout the course of the Scoping process may be used in the preparation of the SPEA. The purpose of this notice of intent is to inform the public, local, State, and Federal government agencies that a Supplemental PEA will be prepared.

In addition, the SPEA will provide those interested with an opportunity to present their comments, information, or other relevant observations concerning alternatives and potential environmental impacts relating to the deployment and installation of the NDRSMP. Alternatives under consideration include: (1) Taking no action; (2) deployment to existing antenna tower sites; (3) leasing antenna space on an existing tower; and (4) new construction of a tower site.

Our efforts to coordinate with appropriate Federal, State and local agencies, and private organizations and citizens who have expressed interest in this proposal will continue. The SPEA will be made available for public and agency review and comment. To ensure that the full range of issues related to the proposed action are addressed and that all significant issues are identified, we invite your comments and suggestions.

Dated: May 17, 2002.

C.D. Wurster,

RADM, U.S. Coast Guard, Assistant Commandant for Acquisitions.

[FR Doc. 02–13130 Filed 5–23–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Forum in Capabilities of the Global Positioning System (GPS) Wide Area Augmentation System (WAAS) and Local Area Augmentation System (LAAS)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

Name: FAA SOIT Forum on GPS/WAAS/LAAS Capabilities.

Time and Date: 9 a.m.–5 p.m., June 3–4, 2002.

Place: Holiday Inn Fair Oaks Hotel, 11787 Lee Jackson Memorial Hwy, Fairfax, Virginia 22033.

Status: Open to the aviation industry with attendance limited to space available.

Purpose: The FAA SOIT will be hosting a public forum to discuss the FAA's GPS approvals and WAAS/LAAS operational implementation plans. This meeting will be held in conjunction with a regularly scheduled meeting of the FAA SOIT and in response to aviation industry requests to the FAA Administrator. Formal presentations by the FAA will be followed by question and answer sessions. Those planning to attend are invited to submit proposed discussion topics.

Registration: Participants are requested to register their intent to attend this meeting by May 31, 2002. Names, affiliations, email addresses, telephone and facsimile numbers should be sent to the point of contact listed below.

Point of Contact: Registration and submission of suggested discussion topics may be made to Mr. Steven Albers, phone (202) 267–7301, fax (202) 267–5086, or email at *steven.CTR.albers@faa.gov.*

Issued in Washington DC on May 3, 2002.

Hank Cabler,

SOIT Co-Chairman.

[FR Doc. 02–13134 Filed 5–23–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–12317]

Notice of Receipt of Petition for Decision that Nonconforming 1997–2000 Mercedes Benz SL Class (W129) Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1997–2000 Mercedes Benz SL Class (W129) passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1997–2000 Mercedes Benz SL Class (W129) passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is June 24, 2002.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to

conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Automobile Concepts, Inc. of North Miami, Florida (''AMC'') (Registered Importer 01–278) has petitioned NHTSA to decide whether 1997–2000 Mercedes Benz SL Class (W129) passenger cars are eligible for importation into the United States. The vehicles which AMC believes are substantially similar are 1997–2000 Mercedes Benz SL Class (W129) passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1997–2000 Mercedes Benz SL Class (W129) passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

AMC submitted information with its petition intended to demonstrate that non-U.S. certified 1997–2000 Mercedes Benz SL Class (W129) passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1997–2000 Mercedes Benz SL Class (W129) passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 Transmission Shift Lever Sequence * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 135 *Passenger Car Brake Systems,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

In addition, the petitioner claims that the vehicles comply with the Bumper Standard found in 49 CFR part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Inscription of the word ''brake'' on the dash in place of the international ECE warning symbol; (b) recalibration of the speedometer to read in miles per hour and inscription of the letters ''MPH'' on the speedometer face, or replacement of the entire instrument cluster with the U.S.-model component.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps; (b) installation of U.S.-model side markers; (c) installation of U.S.-model tail lamp assemblies which incorporate rear sidemarker lights; (d) installation of a U.S.-model high mounted stop light assembly if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component, or inscription of the required warning statement on that mirror.

Standard No. 114 *Theft Protection:* activation of the warning buzzer.

Standard No. 118 *Power Window Systems:* reprogramming of the power window system so that the windows will not operate with the ignition off.

Standard No. 201 *Occupant Protection in Interior Impact:* inspection of each vehicle to ensure that appropriate components have been installed to meet the requirements of the standard, and replacement of any component that is not a U.S.-model part. The petitioner states that the manufacturer has identified the vehicle as meeting the upper interior head impact requirements of the standard.

Standard No. 208 *Occupant Crash Protection:* (a) Activation of the seat belt warning buzzer by reprogramming the unit; (b) inspection of all vehicles and replacement of the driver's and passenger's side air bags, control units, sensors, and seat belts with U.S.-model components on vehicles that are not already so equipped. Petitioner states that the front outboard designated seating positions have combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton. Petitioner further states that the vehicles are equipped with a seat belt warning lamp that is identical to the lamp installed on U.S.-certified models.

Standard No. 214 *Side Impact Protection:* inspection of all vehicles to ensure that they are equipped with door bars identical to those in the U.S. certified model and installation of those components on vehicles that are not already so equipped.

The petitioner states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 am to 5 pm). It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 21, 2002.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 02–13143 Filed 5–23–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety

Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications for Modification of Exemptions.

SUMMARY: In accordance with the procedures governing the application

for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before June 10, 2002.

ADDRESSES: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 21, 2002.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

Application number'	Docket number	Applicant	Modification of exemption
7657–M		Welker Engineering Company, Sugar Land, TX (See Footnote 1)	7657
8125–M		Bristol Bay Contractors, Inc., King Salmon, AK (See Footnote 2) ..	8125
8915–M		E.I. DuPont de Nemours and Company, Wilmington, DE (See Footnote 3).	8915
9508–M		Callery Chemical Company, Pittsburgh, PA (See Footnote 4)	9508
10882–M		Espar Products, Inc., Mississauga, Ontario L5T 1Z8, CN (See Footnote 5).	10882
12102–M	RSPA–98–4005	Onyx Environmental Services, L.L.C., Ledgewood, NJ (See Footnote 6).	12102
12882–M	RSPA–01–11125	Eagle-Picher Technologies, LLC, Joplin, MO (See Footnote 7)	12882

(1) To modify the exemption to authorize the transportation of additional Division 2.1, 2.2, 2.3 and Class 3 materials in a non-DOT specification stainless steel cylinder.

(2) To modify the exemption to authorize the installation of a nozzle for a roto gage in the non-DOT specification IMO Type 5 portable tank for the transportation of certain Division 2.1, 2.2 and Class 3 materials.

(3) To modify the exemption to authorize the transportation of an additional Division 2.1 material in a manifolded DOT Specification cylinder.

(4) To modify the exemption to authorize the transportation of an additional Division 4.3 material in DOT Specification cylinders.

(5) To modify the exemption to authorize the use of additional temperature controlled systems for use in motor vehicles transporting Division 2.1 and Class 3 materials.

(6) To modify the exemption to authorize the transportation of an additional Division 1.1D explosive material desensitized in an appropriate solvent to be shipped as a Class 3 material.

(7) To reissue the exemption originally issued on an emergency basis for the transportation of a Division 2.1 material in a non-DOT specification pressure vessel.

[FR Doc. 02–13129 Filed 5–23–02; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Notice to Operators of Natural Gas and Hazardous Liquid Pipelines To Encourage Continued Implementation of Safe Excavation Practices

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice: Protecting buried pipelines by using safe excavation practices.

SUMMARY: RSPA is issuing this advisory notice to operators of natural gas and hazardous liquid pipelines to remind them of the importance of safe excavation practices. We have also asked our partners in the Common Ground Alliance, a new national non-profit damage prevention organization, and the Associated General Contractors of America and the National Utility Contractors Association, to help distribute this advisory.

I. Supplementary Information

Several recent incidents have provided the impetus to remind the pipeline operators of the importance of safe excavation practices. Increase in construction activity coincides with the arrival of spring in many parts of the country and extends through the summer months. Construction activity requires excavators to work around buried pipelines and other underground facilities, such as water, sewer, electrical and phone lines. Many private citizens also undertake excavation projects in the spring and summer months such as gardening, installing mailboxes, outdoor lights and other projects that require digging. Figures for excavation damage from RSPA's Office of Pipeline Safety (OPS) show an upward trend in the warmer months.

To protect construction workers and the general public and to guard the integrity of the nation's underground infrastructure, RSPA has implemented several damage prevention programs.

These programs were developed in partnership with pipeline operators, excavators, one-call centers, locators, state pipeline safety agencies, and others involved in damage prevention for underground facilities.

The Common Ground Study, issued by OPS, contains best practices for all

phases of damage prevention. In particular, pipeline operators need to provide accurate maps of their facilities to one-call centers; these maps must be updated regularly to reflect any changes. When locate requests are received, facility operators need to be sure that their facilities are marked in a timely and accurate manner whether this is done by operator staff or by contract locators. When facility operators are excavating, they need to call for locates of other facilities, observe the markings of those facilities and take care to avoid coming into contact with other lines while digging. RSPA urges pipeline operators to review the procedures identified in this study and to implement them.

The Common Ground Study can be viewed on line at *www.commongroundalliance.com.*

These best practices have been adopted by many professional associations including the Associated General Contractors, the National Utility Contractors Association, National Utility Locating Contractors Association and others in the damage prevention community. Promotion of these practices is now under the auspices of the Common Ground Alliance (CGA) which represents virtually every segment of the damage prevention community. CGA has also assumed responsibility for promotion of the Dig Safely Campaign launched by DOT in 1999 which identified four key steps in safe excavation:

—Call Before You Dig
—Wait the Required Time in Your State for Operators to Mark Their Facilities
—Observe Marks Indicating the Presence of Facilities When You Dig
—Dig With Care–protect both yourself and the facilities where you are digging.

The National Transportation Safety Board has recommended an important additional step, that excavators should notify the pipeline operator immediately if their work damages a pipeline and that excavators should call 911 immediately if the damage results in a release of natural gas or other hazardous substances or potentially endangers, life, health or property.

II. Advisory Bulletin (ADB–02–01)

To: Owners and Operators of Natural Gas and Hazardous Liquid Pipeline Systems

Subject: Notification to Stress the Importance of Safe Excavation Practices

Advisory: The arrival of warmer weather coincides with a significant increase in construction activity both by professional excavators and home owners and renters. To protect excavators and private citizens from injury and to guard the integrity of buried pipelines and other underground facilities, OPS reminds all concerned to implement the best practices of the Common Ground Study and the four steps of the Dig Safely Campaign.

—Call Before You Dig
—Wait the Required Time in Your State for Operators to Mark Their Facilities
—Observe Marks Indicating the Presence of Facilities When You Dig
—Dig With Care–protect both yourself and the facilities where you are digging.

We ask pipeline operators to undertake the following steps as part of their damage prevention efforts:

—increasing their vigilance on right-of-way inspections;
—reviewing their own procedures for following up on locate requests;
—ensuring that operator employees and contract employees follow Best Practices; and
—increasing outreach efforts to the excavator community during the spring season.

Issued in Washington, DC, on May 17, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–13142 Filed 5–23–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–598X]

BHP Nevada Railroad Company—Discontinuance of Service Exemption—in Elko and White Pine Counties, NV

BHP Nevada Railroad Company (BHP Nevada) filed a notice of exemption under 49 CFR part 1152 Subpart F-*Exempt Abandonments and Discontinuances* to discontinue service over 146 miles of railroad between milepost 0.0 in Cobre and milepost 146.1 in Keystone, in Elko and White Pine Counties, NV. The line traverses United States Postal Service Zip Codes 89835, 89301, 89315 and 89318.

BHP Nevada certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 25, 2002, unless stayed pending reconsideration. Petitions to stay and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) [1] must be filed by June 3, 2002.[2] Petitions to reopen[3] must be filed by June 13, 2002, with: Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicants' representative: Edward D. Greenberg, Galland, Kharasch, Greenberg, Fellman & Swirsky, P.C., Canal Square, 1054 Thirty-First Street, NW., Suite 200, Washington, DC 20007.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: May 15, 2002.

[1] Each offer of financial assistance must be accompanied by the filing fee, which, as of April 8, 2002, is currently set at $1,100. *See* 49 CFR 1002.2(f)(25).

[2] While applicant initially indicated a proposed consummation date of June 22, 2002, and because applicant failed to publish notice in the newspaper as required, and a new filing date of May 6, 2002, was entered when proof of publication was received. Because the verified notice was not complete until May 6, 2002, and hence was not deemed filed until then, the earliest possible date for consummation is 50 days from May 6, 2002 (June 25, 2002). Applicant's representative has confirmed that the correction consummation date is on or after June 25, 2002.

[3] Because this is a discontinuance proceeding and abandonment is not proposed, trail use/rail banking or public use conditions are not appropriate. Likewise, no environmental or historic documentation is required because the circumstances here are similar to those for which exceptions are provided under 49 CFR 1105.6(c)(6) and 1105.8.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–12819 Filed 5–23–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–101 (Sub-No. 17X)]

Duluth, Missabe and Iron Range Railway Company—Abandonment Exemption—in St. Louis County, MN

On May 7, 2002, Duluth, Missabe and Iron Range Railway Company (DM&IR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 2-mile portion of the line known as the Sliver Branch, between milepost S–0.0 and milepost S–2.0, in the City of Virginia in St. Louis County, MN. The line traverses United States Postal Service Zip Code 55792.

The line does not contain any federally granted rights-of-way. Any documentation in DM&IR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 23, 2002.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which is currently set at $1,100. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 13, 2002. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–101 (Sub-No. 17X) and must be sent to: (1) Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Thomas R. Ogoreuc, 135 Jamison Lane, Monroeville, PA 15146. Replies to the DM&IR petition are due on or before June 13, 2002.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition.

The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at ''www.stb.dot.gov.''

Decided: May 21, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–13157 Filed 5–23–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 167X)]

Union Pacific Railroad Company—Abandonment and Discontinuance Exemption—in Cook County, IL

On May 7, 2002, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903–05 [1] to abandon an 8.06-mile portion of a line of railroad, known as the Skokie Industrial Lead (the line), extending from milepost 12.60 south of Oakton Street to the north side of Dempster Street at milepost 13.64 (South Segment) and to discontinue service over a 1.04-mile portion of the line from milepost 13.64 to milepost 21.70 near Northfield (North Segment), a total distance of 9.10 miles, in Cook County, IL.[2] The line traverses U.S. Postal Service Zip Codes 60076 and 60077 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 23, 2002.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the South Segment of the line, it may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 13, 2002.[3] Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 167X) and must be sent to: (1) Surface Transportation Board, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001; and (2) Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Suite 1920, Chicago, IL 60606. Replies to the UP petition are due on or before June 13, 2002.

[1] UP seeks exemptions from the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 and the public use provisions of 49 U.S.C. 10905. These exemption requests will be addressed in the final decision.

[2] *In Union Pacific Railroad Company—Discontinuance of Service—In Cook County, IL,* STB Docket No. AB–33 (Sub-No. 167) (STB served Mar. 28, 2001) (*Waiver Decision*), UP was granted a waiver from certain regulations requiring the filing of specific information in a discontinuance of service application. UP has elected instead to file this petition for exemption seeking to abandon the South Segment and to discontinue service on the North Segment. UP seeks to use the waiver only for the North Segment.

[3] Because UP seeks to discontinue rail service over the North Segment of the line and not to abandon that segment, the trail use/rail banking and public use conditions are not applicable. *See Waiver Decision.* Therefore, a public use condition and trail use/rail banking may be requested only for the South Segment of the line (milepost 12.60 to milepost 13.64).

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at ''WWW.STB.DOT.GOV.''

Decided: May 21, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–13156 Filed 5–23–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network Privacy Act of 1974; Systems of Records

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of alterations to two Privacy Act systems of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Financial Crimes Enforcement Network (FinCEN), Department of the Treasury (Treasury), gives notice of proposed alterations to existing systems of records entitled the ''Suspicious Activity Reporting System—Treasury/DO .212'' and the ''Bank Secrecy Act Reports System—Treasury/DO .213''. The systems of records were last published in their entirety on February 19, 2002, at 67 FR 7496, and 67 FR 7498, respectively.

DATES: Comments must be received no later than June 24, 2002. The revised systems of records will be effective as of July 3, 2002, unless comments are received that result in a contrary determination and notice is published to that effect.

ADDRESSES: Written comments should be sent to: FinCEN, P.O. Box 39, Vienna, VA 22183–0039, Attention: Revisions to PA Systems of Records—Comments. Comments may also be submitted by electronic mail to the following Internet address—regcomments@fincen.treas.gov—with the above caption in the body of the text. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400.

FOR FURTHER INFORMATION CONTACT: Albert R. Zarate, Senior Regulatory Counsel, Office of Chief Counsel, FinCEN, (703) 905–3590.

SUPPLEMENTARY INFORMATION: The systems of records contain information collected under the authority of the Bank Secrecy Act, the popular name for Titles I and II of Public Law 91–508, as amended, and codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5331. The regulations implementing the authority contained in the Bank Secrecy Act are found at 31 CFR part 103. The authority to administer 31 CFR part 103 has been delegated to FinCEN.

The systems of records are being revised to reflect certain changes in the law made by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Public Law 107–56 (October 26, 2001). The USA PATRIOT Act, among other things, provides the Treasury with additional authorities relating to the collection, use, and dissemination of information, including Bank Secrecy Act information, to help prevent, detect, and prosecute money laundering and the financing of terrorism.

Specifically, the routine uses for the systems of records are being amended, consistent with section 358 of the USA PATRIOT Act, to make clear that Bank Secrecy Act information may be provided to United States intelligence agencies for the purpose of conducting intelligence or counterintelligence, including analysis, to protect against international terrorism.

The Suspicious Activity Reporting System also is being altered, consistent with section 314 of the USA PATRIOT Act, to reflect that it may contain information relating to individuals, entities, and organizations reasonably suspected of engaging in terrorist and other criminal activities, including information provided to FinCEN from financial institutions regarding such individuals, entities, and organizations. Existing routine use (7) for the Suspicious Activity Reporting System would permit FinCEN to disclose information within that System to financial institutions to the extent necessary to elicit information pertinent to the investigation, prosecution, or enforcement of civil or criminal statutes, rules, regulations, or orders.

The Bank Secrecy Act Reports System also is being amended, consistent with section 358 of the USA PATRIOT Act, to reflect that BSA reports may be provided to appropriate self-regulatory organizations when relevant to the responsibilities of those organizations. Existing routine use (3) for the Suspicious Activity Report System already contains similar language.

Finally, the Bank Secrecy Act Reports System also is being amended to clarify that FinCEN Form 8300 information reported under the Bank Secrecy Act and its implementing regulations, as authorized by section 365 of the USA PATRIOT Act, is covered by that system. For purposes of clarity, other technical changes to the systems of records are being made, as indicated later in this document.

Because information in the systems of records may be retrieved by personal identifier, the Privacy Act of 1974 requires the Treasury to give general notice and seek public comments when making substantive changes to these Systems.

The altered system of records report, as required by 5 U.S.C. 552a(r), has been submitted to the Committee on Government Reform in the House of Representatives, the Committee on Governmental Affairs in the Senate, and Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' November 30, 2000.

For the reasons set forth above, FinCEN proposes to alter the Suspicious Activity Reporting System and the Bank Secrecy Act Reports System as follows:

TREASURY/DO .212

SYSTEM NAME:

Suspicious Activity Report System (the ''SAR System'')—Treasury/DO.

SYSTEM LOCATION:

Description of change: Delete the existing sentence in this paragraph and in its place add the following language:

The Internal Revenue Service Detroit Computing Center, 985 Michigan Avenue, Detroit, Michigan 48226–1129 and the Financial Crimes Enforcement Network (''FinCEN''), P.O. Box 39, Vienna, VA 22183–0039.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

* * * * *

Description of change: In category (2)(b) of this paragraph, replace the words ''31 U.S.C. 5311, *et seq.*'' with the words ''31 U.S.C. 5311–5331.'' The word ''and'' at the end of category (8) is removed. The period ''.'' at the end of category (9) is replaced with a semicolon (;) and categories (10), (11) and (12) are added to read as follows:

''(10) Individuals, entities and organizations suspected of engaging in terrorist and other criminal activities and any person who may be affiliated with such individuals, entities or organizations;

(11) Individuals or entities named by financial institutions as persons to be contacted for further assistance by government agencies in connection with individuals, entities or organizations suspected of engaging in terrorist or other criminal activities;

(12) Individuals or entities involved in evaluating or investigating any matters in connection with individuals, entities or organizations suspected of engaging in terrorist or other criminal activity.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Description of change: Delete the first sentence of this paragraph and in its place add the following language to read as follows:

''The SAR System contains information reported to FinCEN by a financial institution (including, but not limited to, a depository institution, a money services business, a broker-dealer in securities, and a casino) on a Suspicious Activity Report (''SAR'') that is filed voluntarily or as required under the authority of FinCEN, one or more of the Federal Supervisory Agencies, or under any other authority. The SAR System also may contain information that may relate to terrorist or other criminal activity that is reported voluntarily to FinCEN by any individual or entity through any other means, including through FinCEN's Financial Institutions Hotline. The SAR System also may contain information relating to individuals, entities, and organizations reasonably suspected based on credible evidence of engaging in terrorist or other criminal activities, including information provided to FinCEN from financial institutions regarding such individuals, entities, and organizations.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Description of change: Replace the words ''Department of the Treasury Order 105–08'' with the words ''31 U.S.C. 310''.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of change: The word ''and'' at the end of routine use (11) is removed. The period ''.'' at the end of routine use (12) is replaced with a semicolon (;), and routine use (13) is added to read as follows:

''(13) Disclose information to United States intelligence agencies in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.''

* * * * *

TREASURY/DO .213

SYSTEM NAME:

Bank Secrecy Act Reports System—Treasury/DO.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Description of change: The first sentence of this paragraph is revised to read as follows:

''Persons identified in reports filed under the Bank Secrecy Act and its implementing regulations (31 CFR part 103) including, but not limited to, reports made on IRS Form 4789 (Currency Transaction Report), IRS Form 8362 (Currency Transaction Report by Casinos), forms filed by casinos located in the State of Nevada in lieu of Form 8362, FinCEN Form 8300 (Report of Cash Payments Over $10,000 Received in a Trade or Business), Customs Form 4790 (Report of International Transportation of Currency or Monetary Instruments), Treasury Form TDF 90–22.1 (Report of Foreign Bank and Financial Accounts), Treasury Form TDF 90–22.53 (Designation of Exempt Person), and Treasury Form TDF 90–22.55 (Registration of Money Services Businesses).''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Description of change: The first sentence of this paragraph is revised to read as follows:

''Information or reports filed under the Bank Secrecy Act and its implementing regulations (31 CFR Part 103) including, but not limited to, reports made on IRS Form 4789 (Currency Transaction Report), IRS Form 8362 (Currency Transaction Report by Casinos), forms filed by casinos located in the State of Nevada in lieu of Form 8362, FinCEN Form 8300 (Report of Cash Payments Over $10,000 Received in a Trade or Business), Customs Form 4790 (Report of International Transportation of Currency or Monetary Instruments), Treasury Form TDF 90–22.1 (Report of Foreign Bank and Financial Accounts), Treasury Form TDF 90–22.53 (Designation of Exempt Person), and Treasury Form TDF 90–22.55 (Registration of Money Services Businesses).''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Description of change: Replace the words ''31 U.S.C. 5311–5314, 5316 *et seq.*'' with the words ''31 U.S.C. 5311–5331'' and replace the words ''Treasury Department Order No. 105–08'' with the words ''31 U.S.C. 310''.

PURPOSES:

Description of Change: In the first sentence of this paragraph, replace the words ''31 U.S.C. 5311–5314, 5316, et seq'' with the words ''31 U.S.C. 5311–5331'' and add the words '', or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism'' before the period.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of changes: a. Delete the current text of routine use (4) and in its place add the following to read as follows:

''Provide information or records to any appropriate domestic or non-United States governmental agency or self-regulatory organization charged with the responsibility of administering law or investigating or prosecuting violations of law, or charged with the responsibility of enforcing or implementing a statute, rule, regulation, order, or policy, when relevant to the responsibilities of these agencies or organizations;''

* * * * *

b. The word ''and'' at the end of routine use (7) is removed. The period ''.'' at the end of routine use (8) is replaced with a semicolon (;), and

routine use (9) is added to read as follows:

''(9) Provide information or records to United States intelligence agencies in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.''

* * * * *

Dated: April 8, 2002.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 02–13053 Filed 5–23–02; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before July 23, 2002.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *www.ots.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Nadine Washington, Information Systems, Administration & Finance, (202) 906–6706, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Voluntary Dissolution.

OMB Number: 1550–0066.

Form Number: OTS Form 1499, also known as Form DV.

Regulation Requirement: 12 CFR 546.4.

Description: 12 CFR 546.4 provides for Federal associations to voluntarily dissolve through the submission of a statement of reasons and plan of dissolution. Approval is required by the board of directors, OTS, and the association's members. Plans for dissolution may be denied if OTS believes the plan is not in the best interests of concerned parties.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 4.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours Per Response: Plan for dissolution—80 hours; disclosure to customers—10 minutes per customer.

Estimated Total Burden: 3,080.

Clearance Officer: Sally W. Watts, (202) 906–7380, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 16, 2002.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 02–13066 Filed 5–23–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension, parents' dependency and indemnity compensation (DIC), and spina bifida, and birth defects programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one-year period ending September 30, 2001. VA is also giving notice of the maximum amount of reimbursement that may be paid for headstones or markers purchased in lieu of Government-furnished headstones or markers in Fiscal Year 2002, which began on October 1, 2001.

DATES: These COLAs are effective December 1, 2001. The headstone or marker allowance rate is effective October 1, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service (212B), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7218.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 2306(d), VA may provide reimbursement for the cost of non-Government headstones or markers at a rate equal to the actual cost or the average actual cost of Government-furnished headstones or markers during the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased, whichever is less.

Section 8041 of Pub. L. 101–508 amended 38 U.S.C. 2306(d) to eliminate the payment of the monetary allowance in lieu of VA-provided headstone or

marker for deaths occurring on or after November 1, 1990. However, in a precedent opinion (O. G. C. Prec. 17–90), VA's General Counsel held that there is no limitation period applicable to claims for benefits under the provisions of 38 U.S.C. 2306(d).

The average actual cost of Government-furnished headstones or markers during any fiscal year is determined by dividing the sum of VA costs during that fiscal year for procurement, transportation, and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for Fiscal Year 2001 under the above computation method was $109. Therefore, effective October 1, 2001, the maximum rate of reimbursement for non-Government headstones or markers purchased during Fiscal Year 2002 is $109.

Cost of Living Adjustments

Under the provisions of 38 U.S.C. 5312 and section 306 of Pub. L. 95–588, VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 2.6 percent cost-of-living increase in Social Security benefits effective December 1, 2001. However, the actual increase reflected in this document will be slightly greater than 2.6% to compensate for an error in the calculation of the 1999 Consumer Price Index (CPI). The 2.6% COLA effective December 1, 2001, has been recalculated on the basis of a 2.5% (as opposed to 2.4%) December 1, 1999, COLA. This adjustment was mandated by the Consolidated Appropriations Act, 2001 (Pub. L. 106–554) which requires that each Federal agency that administers an applicable Federal benefit program compensate beneficiaries for the shortfall caused by the December 1, 1999 CPI error. Therefore, applying the COLA factors as indicated above and rounding up in accordance with 38 CFR 3.29, the following increased rates and income limitations for the VA pension and parents' DIC programs will be effective December 1, 2001:

TABLE 1.—IMPROVED PENSION

[Maximum annual rates]

(1) Veterans permanently and totally disabled (38 U.S.C. 1521):	
Veteran with no dependents	$9,556
Veteran with one dependent	12,516
For each additional dependent	1,630
(2) Veterans in need of aid and attendance (38 U.S.C. 1521):	
Veteran with no dependents	15,945
Veteran with one dependent	18,902
For each additional dependent	1,630
(3) Veterans who are housebound (38 U.S.C. 1521):	
Veteran with no dependents	11,679
Veteran with one dependent	14,639
For each additional dependent	1,630
(4) Two veterans married to one another, combined rates (38 U.S.C. 1521):	
Neither veteran in need of aid and attendance or housebound	12,516
Either veteran in need of aid and attendance	18,902
Both veterans in need of aid and attendance	24,628
Either veteran housebound	14,639
Both veterans housebound	16,763
One veteran housebound and one veteran in need of aid and attendance	21,022
For each dependent child	1,630

TABLE 1.—IMPROVED PENSION—Continued

[Maximum annual rates]

(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 1541):	
Surviving spouse alone	6,407
Surviving spouse and one child in his or her custody	8,389
For each additional child in his or her custody	1,630
(6) Surviving spouses in need of aid and attendance (38 U.S.C. 1541):	
Surviving spouse alone	10,243
Surviving spouse with one child in custody	12,221
Surviving Spouse of Spanish-American War veteran alone	10,905
Surviving Spouse of Spanish-American War veteran with one child in custody	12,882
For each additional child in his or her custody	1,630
(7) Surviving spouses who are housebound (38 U.S.C. 1541):	
Surviving spouse alone	7,832
Surviving spouse and one child in his or her custody	9,810
For each additional child in his or her custody	1,630
(8) Surviving child alone (38 U.S.C. 1542)	1,630

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 1521, 1541 and 1542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $2,166. (38 U.S.C. 1521(g))

Parents' DIC

DIC shall be paid monthly to parents of a deceased veteran in the following amounts (38 U.S.C. 1315):

TABLE 2.

[*One parent.* If there is only one parent, the monthly rate of DIC paid to such parent shall be $457 reduced on the basis of the parent's annual income according to the following formula:]

For each $1 of annual income		
The $457 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	$0	$800
.08	800	10,871

No DIC is payable under this table if annual income exceeds $10,871.

One parent who has remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under Table 2 or under Table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's

spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in Table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $329 reduced on the basis of each parent's annual income, according to the following formula:

TABLE 3.

For each $1 of annual income		
The $329 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.06	800	900
.07	900	1,100
.08	1,100	10,871

No DIC is payable under this table if annual income exceeds $10,871.

Two parents living together or remarried parents living with spouses. The rates in Table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $309 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

TABLE 4.

For each $1 of annual income		
The $309 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$1,000
.03	1,000	1,500
.04	1,500	1,900
.05	1,900	2,400
.06	2,400	2,900
.07	2,900	3,200
.08	3,200	14,612

No DIC is payable under this table if combined annual income exceeds $14,612.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in Table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under Tables 2 through 4 shall be increased by $246 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under Tables 2 through 4 shall not be less than $5.

TABLE 5.—SECTION 306 PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse with no dependents	$10,871	(Pub. L. 95–588, section 306(a)).
(2) Veteran with no dependents in need of aid and attendance	11,371	(38 U.S.C. 1521(d) as in effect on December 31, 1978).
(3) Veteran or surviving spouse with one or more dependents	14,612	(Pub. L. 95–588, section 306(a)).
(4) Veteran with one or more dependents in need of aid and attendance	15,112	(38 U.S.C. 1521(d) as in effect on December 31, 1978).
(5) Child (no entitled veteran or surviving spouse)	8,886	(Pub. L. 95–588, section 306(a)).
(6) Spouse income exclusion (38 CFR 3.262)	3,468	(Pub. L. 95–588, section 306(a)(2)(B)).

TABLE 6.—OLD-LAW PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse without dependents or an entitled child	$9,516	(Pub. L. 95–588, section 306(b)).
(2) Veteran or surviving spouse with one or more dependents	13,719	(Pub. L. 95–588, section 306(b)).

Spina Bifida Benefits

Section 421 of Public Law 104–204 added a new chapter 18 to title 38, United States Code, authorizing VA to provide certain benefits, including a monthly monetary allowance, to children born with **spina bifida** who are natural children of veterans who served in the Republic of Vietnam during the Vietnam era. Pursuant to 38 U.S.C. 1805(b)(3), **spina bifida** rates are subject to adjustment under the provisions of 38 U.S.C. 5312, which provides for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 *et*

seq.). Effective December 1, 2001, **spina bifida** monthly rates are as follows:
Level I—$228
Level II—$792
Level III—$1,354

Birth Defects Benefits

Section 401 of Public Law 106–419 authorizes the payment of monetary benefits to, or on behalf of, children of female Vietnam veterans born with certain birth defects. Rates are subject to adjustment under the provisions of 38 U.S.C. 5312, which provides for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 *et seq.*). Effective December 1, 2001, birth defects monthly rates are as follows:
Level I—$100
Level II—$228
Level III—$792
Level IV—$1,354

Dated: May 16, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 02–13095 Filed 5–23–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Scientific Review and Evaluation Board for Health Services Research and Development Service; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Scientific Review and Evaluation Board for Health Services Research and Development Service will be held at the Crowne Plaza Hotel, 14th and K Streets, NW., Washington, DC, from June 19 through 21, 2002. The Nursing Research Initiative review will convene on June 19, from 1 p.m. until 5 p.m. The investigator Initiated Research review will convene on June 19, from 7 p.m. until 9 p.m., on June 20, from 8 a.m. until 5 p.m. and on June 21, from 8 a.m. until 4 p.m. The purpose of the meeting is to review research and development applications concerned with the measurement and evaluation of health care services and with testing new methods of health care delivery and management, and nursing research. Applications are reviewed for scientific and technical merit. Recommendations regarding funding are prepared for the Chief Research and Development Officer.

This meeting will be open to the public at the start of the June 19 session for approximately one half-hour to cover administrative matters and to discuss the general status of program. The closed portion of the meeting involves discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would be likely to frustrate significantly the implementation of proposed agency action regarding such research projects). As provided by the subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C. 552(c)(6) and (9)(B).

Those who are planning to attend the open session or wishing further information should contact Dr. Martha Bryan, Assistant Director, Scientific Review (124F), Health Services Research and Development Service, Department of Veterans Affairs, 1400 Eye Street, NW., Suite 780, Washington, DC at (202) 408–3665.

Dated: May 20, 2002.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–13099 Filed 5–23–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the National Research Advisory Council will meet at the Hyatt Dulles, 2300 Dulles Corner Boulevard, Herndon, VA 20171, on June 20, 2002, from 8:30 a.m. until 4 p.m. The meeting is open to the public. The purpose of the Council is to provide external advice and review for VA's research mission.

The meeting will begin with opening remarks and an overview by the Council Chairman. The Council will receive informational briefings on the VA Health Services Research Program, human subjects protection issues in VA and the peer review process.

Any member of the public wishing to attend the meeting or further information should contact Ms. Karen Scott, Department of Veterans Affairs, Office of Research and Development (12C2), 801 I Street, NW., Washington, DC at (202) 565–8381.

Dated: May 20, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–13098 Filed 5–23–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

President's Task Force To Improve Health Care Delivery for Our Nation's Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is scheduled for Wednesday, June 5, 2002, beginning at 9 a.m. and adjourning at 4 p.m. and Thursday, June 6, 2002, beginning at 8:30 a.m. and adjourning at 11:30 a.m. The June 5 session will be held in the Horizon Ballroom of the Ronald Reagan Building International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The June 6 session will be held in the First Floor Conference Room of the VFW Memorial Building, 200 Maryland Avenue, NE., Washington, DC. Both sessions are open to the general public.

The purpose of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is to:

(a) Identify ways to improve benefits and services for Department of Veterans Affairs (VA) beneficiaries and Department of Defense (DoD) military retirees who are also eligible for benefits from VA, through better coordination of the activities of the two departments;

(b) Identify opportunities to remove barriers that impede VA and DoD coordination, including budgeting processes, timely billing, cost accounting, information technology, and reimbursement; and

(c) Identify opportunities through partnership between VA and DoD, to maximize the use of resources and infrastructure, including buildings, information technology and data sharing systems, procurement of supplies, equipment and services.

On the morning of June 5, the Vision Work Group and the Leadership Work Group will brief the Committee. During the afternoon session, the Benefits and Services Work Group, Resources and Budgeting Work Group, and Pharmaceuticals Work Group will brief the Committee. On the morning of June 6, the Acquisition and Procurement

Work Group, Facilities Work Group, and Information Management/Information Technology Work Group will brief the Committee.

Interested parties can provide written comments to Mr. Dan Amon, Communications Director, President's Task Force to Improve Health Care Delivery for Our Nation's Veterans, 1401 Wilson Boulevard, 4th Floor, Arlington, Virginia 22209.

Dated: May 20, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Office.

[FR Doc. 02–13096 Filed 5–23–02; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities will be held on Thursday, June 6, 2002, from 10 a.m. until 5 p.m., and on Friday, June 7, 2002, from 9 a.m. until 12:30 p.m., in Room 460, Export Import Bank, 811 Vermont Avenue, NW., Washington, DC. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on matters of structural safety in the construction and remodeling of VA facilities and to recommend standards for use by VA in the construction and alteration of facilities as prescribed under Section 8105 of Title 38, United States Code.

On June 6, the Committee will review developments in the field of structural design, as they relate to seismic safety of buildings, and fire safety issues. On June 7, the Committee will vote on structural and fire safety issues for inclusion in VA's standards.

Those wishing to attend should contact Kristna K. Banga, Senior Structural Engineer, Facilities Quality Service, Office of Facilities Management, Department of Veterans Affairs, at (202) 565–9370.

Dated: May 17, 2002.

By Direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–13097 Filed 5–23–02; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 67, No. 101

Friday, May 24, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

Prohibition on Gasoline Containing Lead or Lead Additives for Highway Use: Fuel Inlet Restrictor Exemption for Motorcycles

Correction

Rule document 01-31797 was inadvertently published in the Proposed Rules section in the issue of Thursday, December 27, 2001, appearing on page 66867. It should have appeared in the Rules and Regulations Section.

[FR Doc. C1–31797 Filed 5–23–02; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21 and 74

[WT Docket No. 02–68; RM–9718; FCC 02–101]

Mulitpoint Distribution Service (''MDS'') and Instructional Television Fixed Service (''ITFS'')

Correction

In proposed rule document 02–12429 beginning on page 35083 in the issue of Friday, May 17, 2002, make the following correction:

On page 35083, in the second column, under the heading **DATES:**, ''June 17, 2002'' should read, ''July 16, 2002''.

[FR Doc. C2–12429 Filed 5–23–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Immigration and Naturalization Service

8 CFR Parts 103 and 214

[INS No. 2185-02]

RIN 1115-AG55

Retention and Reporting of Information for F, J, and M Nonimmigrants; Student and Exchange Visitor Information System (SEVIS)

Correction

In proposed rule document 02–12022 beginning on page 34865 in the issue of Thursday, May 16, 2002, make the following correction:

On page 34865, first column, fifth line, ''not'' should read ''now''.

[FR Doc. C2–12022 Filed 5–23–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8987]

RIN 1545–AY69, 1545–AY70

Required Distributions From Retirement Plans

Correction

In rule document 02–8963 beginning on page 18988 in the issue of Wednesday, April 17, 2002, make the following corrections:

§ 1.401(a)(9)-9 [Corrected]

On page 19016, in the ''JOINT AND LAST SURVIVOR TABLE'', the table is corrected in part to read as follows.

JOINT AND LAST SURVIVOR TABLE

Ages	20	21	22	23	24	25	26	27	28	29
*	*	*	*	*						
25	67.9	67.3	66.7	66.2	65.6	65.1	64.6	64.2	63.7	63.3
*	*	*	*	*						
63	63.2	62.3	61.3	60.3	59.4	58.4	57.5	56.5	55.6	54.6
*	*	*	*	*						

[FR Doc. C2–8963 Filed 5–23–02; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
May 24, 2002

Part II

Securities and Exchange Commission

17 CFR Part 230 et al.
Mandated EDGAR Filing For Foreign Issuers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, 240, 249, and 269

[Release Nos. 33–8099, 34–45922, International Series Release No. 1259; File No. S7–18–01]

RIN 3235–AI08

Mandated EDGAR Filing For Foreign Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to the rules that govern our Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. These amendments will require foreign private issuers and foreign governments to file electronically through the EDGAR system most of their securities documents, including registration statements under the Securities Act of 1933 and registration statements, reports and other documents under the Securities Exchange Act of 1934. By mandating the electronic filing of foreign issuers' securities documents on EDGAR, we hope to realize the same investor benefits and the same efficiencies in information transmission, dissemination, retrieval and analysis achieved since we mandated EDGAR filing for domestic issuers in 1993. We also are adopting rule amendments to clarify when an electronic or paper filer may submit an English summary instead of an English translation of a foreign language document. We are further eliminating the current requirement that any first-time EDGAR filer, domestic or foreign, submit a paper copy of its electronic filing to the Commission. Finally, we are permitting a national securities exchange to file voluntarily on EDGAR a Form 25, which reports the delisting of a class of a company's securities.

DATES: *Effective Date:* November 4, 2002, except for § 232.101(d), § 232.101(b)(10), and § 232.101(c)(9), which are effective May 24, 2002.

Comments Due: Comments on the ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 should be received by June 24, 2002.

ADDRESSES: Please submit three copies of your comments to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. You also may submit your comments electronically at the following e-mail address: rule-comments@sec.gov. Your comment letter should refer to File No. S7–18–01; include this file number in the subject line if you use electronic mail. We will make comment letters available for public inspection and copying in our Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. We will post electronically submitted comment letters on our Internet web site (http://www.sec.gov).[1]

FOR FURTHER INFORMATION CONTACT: Elliot B. Staffin, Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, by telephone at (202) 942–2990, or in writing at U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting rule amendments that will rescind Rule 601[2] under Regulation S–T[3] and revise the following rules and forms: Rules 403 and 493[4] under the Securities Act of 1933 (''Securities Act'');[5] Rules 100, 101, 303, 306, and 311[6] under Regulation S–T; Rule 12b–12[7] under the Securities Exchange Act of 1934 (''Exchange Act'');[8] and Forms F–1, F–2, F–3, F–4, F–6, F–7, F–8, F–9, F–10, F–80, F–X, and CB under the Securities Act;[9] and Forms 20–F, 40–F, and 6–K,[10] and Schedules 13E–4F, 14D–1F, and 14D–9F[11] under the Exchange Act.

Table of Contents

I. Executive Summary and Background

EDGAR is the electronic data gathering, analysis and retrieval system[12] of the Securities and Exchange Commission (''Commission'') that enables registered companies and other persons to file their securities documents with the Commission in electronic format.[13] Filings submitted

[1] We do not edit personal, identifying information, such as names or electronic mail addresses, from electric submissions. Submit only information that you wish to make publicly available.

[2] 17 CFR 232.601.

[3] 17 CFR 232.10 *et seq.*

[4] 17 CFR 230.403 and 230.493.

[5] 15 U.S.C. 77a *et seq.*

[6] 17 CFR 232.100, 232.101, 232.303, 232.306 and 232.311.

[7] 17 CFR 240.12b–12.

[8] 15 U.S.C. 78a *et seq.*

[9] 17 CFR 239.31, 239.32, 239.33, 239.34, 239.36, 239.37, 239.38, 239.39, 239.40, 239.41, 239.42, and 239.800. Forms F–X and CB are also authorized as Exchange Act forms under 17 CFR 249.250 and 249.480. Form F–X is further authorized under the Trust Indenture Act of 1939 (''Trust Indenture Act'') [15 U.S.C. 77aaa *et seq.*] under Trust Indenture Act Rule 269.5 [17 CFR 269.5].

[10] 17 CFR 249.220f, 249.240f, and 249.306.

[11] 17 CFR 240.13e–102, 240.14d–102, and 240.14d–103.

[12] We encourage foreign issuers and others who are unfamiliar with our EDGAR system to review the document entitled *Electronic Filing and the EDGAR System: A Regulatory Overview* (''*EDGAR Overview*''), which is available on our web site located at www.sec.gov/info/edgar/shtml. The EDGAR Filer Manual, v. 8.2, which contains recently updated instructions for electronic filing, is also available on this web site.

[13] Filers can currently submit documents in electronic format by direct transmission, either by using a dial-up modem or Internet service provider, or on magnetic cartridge. EDGAR filers may submit documents formatted either in American Standard Code for Information Interchange (''ASCII'') or a version of HyperText Markup Language (''HTML'').

on EDGAR are available to the public on our web site as well as through many other information providers. Registrants and other persons submitted over 326,600 filings on EDGAR in fiscal 2001 and 305,000 filings in fiscal 2000.

When we launched the operational phase of EDGAR in 1993,[14] we imposed electronic filing requirements only on domestic issuers.[15] We based the initial exclusion of foreign issuers from the mandated EDGAR regime in part on our belief that foreign issuers would incur higher costs from the implementation of EDGAR than those faced by domestic filers.[16] While we encouraged foreign issuers to file their securities documents on EDGAR, we have not generally required these issuers to file electronically until now, although many foreign issuers file their securities documents on EDGAR on a voluntary basis.[17]

A. Our Reasons for Adopting Mandated EDGAR Filing for Foreign Issuers

We expect EDGAR filing requirements for foreign issuers to result in the following benefits:

- More rapid dissemination of, and easier access to, financial and other material information about foreign issuers than under our current paper filing system, which will facilitate the following of foreign filers' securities by investors, analysts and others while enhancing market exposure for these securities;
- Increased efficiencies in the filing process, which will significantly reduce the filing time required under traditional methods of paper delivery, while offering foreign filers a secure and reliable method of delivery; and
- More efficient storage, retrieval, and analysis of financial and other material information about foreign filers than under the current paper and microfiche regime, which will not only facilitate staff review of a particular foreign issuer's registration statement or report but also enhance the Commission's ability to study and address issues that confront foreign issuers.

In the initial operational phase of EDGAR, with the Internet relatively undeveloped compared to today, electronic filers could only transmit their documents directly to the Commission over long distance telephone lines and not over the Internet.[18] As a result, foreign filers that attempted to transmit directly their electronic documents to the Commission faced higher long distance transmission costs than those borne by domestic companies. Depending on their location, foreign filers also faced potential shortages of long distance lines and proper telecommunications equipment, such as compatible modems. Foreign filers also faced the widespread local unavailability of necessary computer hardware and software and trained personnel capable of transforming their documents into EDGAR compatible files.

Since that time, many advances in information and telecommunications technology have occurred that have dramatically increased Internet use by businesses, consumers, investors, and government agencies. These advances have transformed the Internet into one of the principal means for the rapid dissemination and retrieval of information. Because of these advances, most foreign private issuers that are Exchange Act reporting companies already have electronically formatted their financial statements and other material information either for presentation on their web sites or to comply with the requirements of their home country securities commissions.[19] These advances in information technology also have increased the number of foreign private issuers that have chosen to file voluntarily their securities documents with the Commission on EDGAR.[20]

In addition, today a foreign issuer that seeks to file electronically with the Commission is likely to be able to transmit its electronically formatted documents to us over the Internet through the use of an Internet service provider, thereby saving in long distance telecommunications transmission costs. Moreover, a foreign issuer wanting filing assistance is now more likely to be able to use a local filing agent, thanks to the global expansion of financial printers and consulting firms that are knowledgeable about the Commission's EDGAR requirements.

Furthermore, many foreign filers should today experience reduced EDGAR start-up costs because they have already achieved a level of technological proficiency. These initial costs include the costs associated with hiring an information technology team or training existing employees to be technologically proficient, hiring a filing agent, hiring an Internet service provider, and preparing the documents for electronic formatting. Many foreign companies have already assembled an information technology team to present their financial and business information on their web sites. Many of these employees or agents are likely to be familiar with HTML, which is a dominant language of the Internet. Because EDGAR now accepts documents formatted in a version of HTML as well as in ASCII, this familiarity with HTML should reduce the time it takes for the information technology teams of many foreign issuers to learn the EDGAR system.[21]

Filers also may choose to provide an unofficial copy of a filing in Portable Document Format (''PDF'').

[14] We initially launched EDGAR as a pilot program in 1984, which enabled companies to participate voluntarily in the EDGAR system until 1993. Release No. 33–6977 (February 23, 1993) [58 FR 14628].

[15] Following adoption of the operational EDGAR rules in 1993, we phased in the electronic filing requirements for domestic issuers in discrete groups. The last group of domestic issuers became mandated EDGAR filers in May 1996. Release No. 33–7369 (December 6, 1996) [61 FR 65440].

[16] Currently, we require a foreign issuer or person to file a document on EDGAR only if it jointly files a registration statement or some other document with a domestic issuer or if it files a document, such as a Schedule 13D or tender offer schedule, that pertains to a registered domestic issuer. See Rules 101(c) [17 CFR 232.101(c)] and 601(a) of Regulation S–T [17 CFR 232.601(a)].

[17] Regulation S–T currently provides for the voluntary participation of foreign issuers in the EDGAR system under Rules 100(a) [17 CFR 232.100(a)] and 601(a) and (b) [17 CFR 232.601(a) and (b)]. However, until recently, some foreign issuer filings could not be made on EDGAR due to the lack of corresponding electronic form types. As of April 8, 2002, programming for these form types has been completed so that foreign issuers may now voluntarily file these forms electronically.

[18] Following amendments in 2000, EDGAR filers have been able to use direct transmission by either dial-up modem or the Internet as well as magnetic cartridges as means of transforming filings electronically to the Commission. Release No. 33–7855 (April 24, 2000) (65 FR 27488]

[19] Approximately 81% of the foreign private issuers that were Exchange Act reporting companies as of December 31, 2000, and nearly 78% of the foreign private issuers that became Exchange Act reporting companies in calendar year 2001, had electronically formatted their financial statements and other material information for posting on their web sites or for their sovereign securities commission or other authorities. See Part IV of this release for further discussion.

[20] Approximately 18% and 20% of the foreign private issuers that were Exchange Act reporting companies at the end of, respectively, calendar years 2000 and 2001 elected to file their securities documents on EDGAR. See Part IV below for further discussion. See also *Foreign Companies Registered and Reporting With the U.S. Securities and Exchange Commission December 31, 2001,* published by the Office of International Corporate Finance, Division of Corporation Finance (''*Reporting Foreign Issuers List*'') which is available on our web site at www.sec.gov/divisions/corpfin/internatl/companies.shtml. The comparable list of Exchange Act reporting foreign private issuers as of December 31, 2000 is also available on our web site.

[21] As part of an ongoing modernization of the EDGAR system, in addition to enabling issuers to transmit their electronic filings directly via the Internet, we have sought to expand the range of electronic languages recognized by the EDGAR system. Since June 28, 1999, electronic filers have been able to submit their securities documents in either HTML or ASCII. See Release No. 33–7684 (May 17, 1999) [64 FR 27888]. Since May 30, 2000, EDGAR filers have been able to submit HTML documents that include graphic and image files and

Continued

Investors have also come to expect electronic access to financial and business information about public companies, regardless of their country of origin, and to financial information about foreign governments.[22] Because of these developments, we believe that the time is right to adopt rules mandating EDGAR filing for foreign issuers.

B. Comments Received

On September 28, 2001, we proposed rule amendments that would require foreign private issuers [23] and foreign governments [24] to file their securities documents with the Commission on EDGAR.[25] We received 32 comment letters in response to our proposed rule amendments mandating EDGAR filing for foreign issuers.[26] Many commenters expressed general approval of the proposal. Several of these commenters agreed that foreign issuers, investors, and members of the financial community would reap the same benefits from these rules as those achieved by mandated filing for domestic issuers. The benefits cited were the more rapid dissemination of information about, facilitation of research and data analysis concerning, and increased market exposure for the securities of foreign issuers.

However, a number of commenters also expressed concern about one or more aspects of the proposed amendments. The issues that generated the most discussion were:

- The proposed elimination of the option to provide an English summary or version in lieu of a full English translation of a foreign language document required as an exhibit or other attachment to a filing;
- The requirement that an officer or official of an issuer, whether foreign or domestic, certify in writing that an English translation is a fair and accurate one;
- The proposed mandated EDGAR filing of Form 6–K reports except for Form 6–K reports submitted to furnish a foreign issuer's annual report to security holders;
- The proposed four month transition period; and
- Whether the Commission should expand its EDGAR filing hours beyond the current 8:00 A.M. to 10:00 P.M. ET period.[27]

C. Summary of the Amendments

Most of the rule amendments are adopted as proposed. For example, most of the same Securities Act and Exchange Act forms that were the subject of mandated EDGAR filing under the proposed rules will be the subject of mandated EDGAR filing under the adopted rules as well. However, we have responded to a number of comments and made significant changes to the proposed requirements.

The adopted amendments will require the electronic filing of:

- Foreign private issuers' Securities Act registration statements and Exchange Act registration statements and reports, including Form 6–K except as discussed below; [28]
- Foreign governments' Securities Act registration statements and Exchange Act registration statements and reports;
- Multijurisdictional Disclosure System (''MJDS'') forms and schedules filed by Canadian issuers;
- Statements of beneficial ownership on Schedules 13D and 13G and tender offer schedules that pertain to the securities of a foreign issuer, whether filed by a foreign or domestic person;
- Form CB, the form used for cross-border rights offers, exchange offers and business combinations that are exempt from the tender offer rules or Securities Act registration, if the filer is an Exchange Act reporting company; [29] and
- Most Trust Indenture Act forms.

The adopted amendments will permit either the electronic or paper filing of:

- A Form 6–K report if the sole purpose of the Form 6–K is to submit the foreign private issuer's attached annual report to security holders, or an attached ''statutory'' report under specified circumstances, as discussed below; [30]
- Form CB if the filer is not an Exchange Act reporting company; [31] and
- Reports that specified supranational entities, such as the World Bank, must file with the Commission.[32]

The adopted amendments will also: [33]

- Continue to require documents submitted under Exchange Act Rule 12g3–2(b) to be in paper only; and
- Eliminate the requirement that a domestic or foreign filer must submit a paper copy of its first electronic filing.[34]

We adopted the following principal changes to the proposed rules at the request of commenters:

- We have amended both the electronic and paper filing rules to permit the use of an English summary for specified categories of foreign language documents included in Division of Corporation Finance filings and submissions instead of requiring an English translation for all foreign language documents.[35]
- We have adopted a rule that provides guidance regarding what constitutes an acceptable English summary.[36]
- We have eliminated the proposed written certification requirement regarding the fairness and accuracy of an English translation for both foreign and domestic filers.[37]

expanded use of hyperlinks. See Release No. 33–7855 (April 24, 2000) [65 FR 24788].

[22] See Release No. 33–8016, 34–44868 (September 28, 2001) [66 FR 50744] (''Proposing Release''), Part I.B, the text surrounding n. 34, for further discussion of information about foreign governments that is currently available on the Internet.

[23] ''Foreign private issuer'' is defined in Securities Act Rule 405 [17 CFR 230.405] and Exchange Act Rule 3b–4 [17 CFR 240.3b–4].

[24] ''Foreign government'' refers to any issuer that is eligible to register securities under Schedule B of the Securities Act, including political subdivisions and some quasi-governmental entities.

[25] See Proposing Release.

[26] Because three of the letters each represented multiple entities, the 32 comment letters represented a total of 57 distinct entities, including 24 corporations, 12 financial printers and filing agents, 10 law firms and one individual attorney, four accounting and consulting firms, three banks, and three professional associations. These comment letters and a summary of comments (''Comment Summary'') prepared by our staff are available for public inspection in our Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549, in File No. S7–18–01. Public comments submitted electronically are also available on our web site located at http:/www.sec.gov/rules/proposed/s71801/shtml. The Comment Summary is also available on our web site.

[27] We solicited comment on the adequacy of the current EDGAR filing hours without making a specific proposal about them. See the Proposing Release at Part II.C.

[28] New Regulation S–T Rule 100(a) and (c) [17 CFR 232.100(a) and (c)].

[29] New Regulation S–T Rule 101(a)(vi) [17 CFR 232.101(a)(vi)].

[30] New Regulation S–T Rules 101(b)(1) and 101(b)(7) [17 CFR 232.101(b)(1) and 101(b)(7)]. See also Part II.B.2, below.

[31] New Regulation S–T Rule 101(b)(8) [17 CFR 232.101(b)(8)].

[32] New Regulation S–T Rule 101(b)(6) [17 CFR 232.101(b)(6)].

[33] To lessen paperwork burdens for national securities exchanges, the amendments will also permit national securities exchanges to file Form 25 (''Notification of the Removal From Listing and Registration of Matured, Redeemed or Retired Securities'') [17 CFR 249.25] via the EDGAR system on a voluntary basis. See new Regulation S–T Rule 101(b)(10) [17 CFR 232.101(b)(10)] and new Regulation S–T Rule 101(c)(9)]. Currently, Regulation S–T requires the filing of Form 25 with the Commission in paper format only. See the current version of Regulation S–T Rule 101(c)(9).

[34] Regulation S–T Rule 101(d) [17 CFR 232.101(d)] currently codifies this paper filing requirement for first-time EDGAR filers. The adopted amendments will remove this provision in its entirety.

[35] New Regulation S–T Rule 306(a) [17 CFR 232.306(a)], new Securities Act Rule 403(c)(3) [17 CFR 230.403(c)(3)], and new Exchange Act Rule 12b–12(d)(3)]. We have also amended Form 6–K to specify further which foreign language documents require the submission of an English translation and which may be the subject of an English summary. New paragraph D of the General Instructions to Form 6–K.

[36] New Regulation S–T Rule 306(a), new Securities Act Rule 403(c)(3)(ii) [17 CFR 230.403(c)(3)(ii)], and new Exchange Act Rule 12b–12(d)(3)(ii) [17 CFR 240.12b–12(d)(3)(ii)].

[37] Regulation S–T Rule 306(a) currently provides for this written certification requirement.

• We are permitting the submission of the unabridged foreign language document in paper to accompany an English summary or translation or when permitted by the applicable form;

• We are permitting either the electronic or paper submission of a ''statutory'' report, as discussed below, or other document by a foreign private issuer under cover of Form 6–K as long as the report or other document is not a press release, is not required to be and has not been distributed to the foreign private issuer's security holders, and, if discussing a material event, including the disclosure of annual audited or interim consolidated financial results, has already been the subject of a Form 6–K submission or other Commission filing on EDGAR.[38]

• We have amended Form 6–K to clarify that a foreign private issuer is not required to submit under cover of Form 6–K an offering circular or prospectus that pertains solely to a foreign offering, even when an English translation or English summary is available, if the issuer has already submitted on EDGAR a Form 6–K, Form 20–F, or other Commission filing that reported material information disclosed in the offering circular or prospectus.[39]

• We are permitting an MJDS filer to include in an electronic filing that is an HTML document both French and English text in an exhibit to or part of a registration statement, annual report, or tender offer schedule if the filer included the French text to comply with the requirements of the Canadian securities administrator or other Canadian authority.[40]

In addition, in response to commenters who urged a transition period longer than the proposed four months, we are providing a transition period of almost six months. The rules will take effect on Monday, November 4, 2002.

II. Discussion

A. Amendments to Regulation S–T Sections 100 and 601

We are adopting as proposed the amendments to Regulation S–T that will generally require foreign private issuers and foreign governments to file their Securities Act and Exchange Act documents with us on EDGAR.[41] Currently Regulation S–T Rules 100 and 601 are the provisions that exclude foreign private issuers and foreign governments from the Commission's electronic filing requirements. The amendments will eliminate the foreign issuer exception primarily by revising Rules 100(a) and (c) and removing Rule 601 in its entirety. The amendments will:

• Revise Rule 100(a) by removing the phrase ''except for foreign private issuers and foreign governments'' to state that Regulation S–T applies to all registrants whose filings are subject to review by the Division of Corporation Finance;[42]

• Eliminate the phrase ''foreign private issuers and foreign governments'' in Rule 100(c) to clarify that mandated electronic filing applies to any party that files a document jointly with, or as a third party filer with respect to, a registrant that is subject to mandated electronic filing;[43] and

• Eliminate as unnecessary Rule 601 in its entirety since the adopted amendments will generally extend electronic filing requirements to foreign private issuers and foreign governments, and since we have programmed the EDGAR system to provide an electronic form type for any foreign form that currently lacks one.[44]

Upon the effectiveness of these amendments, mandated EDGAR filing will apply to a foreign issuer's documents filed or submitted under the Securities Act and Exchange Act unless otherwise provided by Regulation S–T. Moreover, because these amendments will generally subject foreign private issuers and foreign governments to Regulation S–T's electronic filing requirements, both domestic and foreign entities will have to file on EDGAR any joint or third party filing that relates to a foreign issuer.[45]

B. Foreign Issuer Forms and Documents Under the Amendments

1. Securities Act Registration Statements and Exchange Act Registration Statements and Annual Reports of Foreign Private Issuers

As proposed, the adopted amendments will require foreign private issuers[46] to file electronically their Securities Act registration statements on Forms F–1, F–2, F–3, and F–4,[47] and their Exchange Act registration statements and annual reports on Form 20–F. The amendments also will mandate the filing on EDGAR, as proposed, of Form F–6,[48] the Securities Act registration statement pertaining to depositary shares evidenced by American Depositary Receipts (''ADRs'').

Two commenters opposed extending EDGAR filing requirements to Form F–6 registration statements. Both stated that the Form F–6 registration statement contains little issuer information and principally consists of the attached depositary agreement, which tends to be fairly standard from one registration statement to the next. Consequently, according to these commenters, mandated EDGAR filing would increase the preparation costs of depositaries and foreign private issuers while yielding little benefit to investors.

We disagree with this conclusion. While the Form F–6 registration statement may principally consist of the depositary agreement, this document is the governing instrument that sets forth the rights of ADR holders concerning

---

[38] New Regulation S–T Rule 101(b)(7).

[39] New paragraph D of the General Instructions to Form 6–K.

[40] New Regulation S–T Rule 306(a), new Securities Act Rule 403(c)(5) [17 CFR 230.403(c)(5)], and new Exchange Act Rule 12b–12(d)(6) [17 CFR 240.12b–12(d)(6)].

[41] Regulation S–T also requires the electronic filing of any related correspondence and supplemental information pertaining to a document that is the subject of mandated EDGAR. Regulation S–T Rule 101(a)(1) [17 CFR 232.101(a)(1)]. These materials are not disseminated publicly but are available to the Commission staff.

[42] Rule 100(a) currently provides that the electronic filing requirements of Regulation S–T apply to ''[r]egistrants whose filings are subject to review by the Division of Corporation Finance except for foreign private issuers and foreign governments.''

[43] 17 CFR 232.100(c). Rule 100(c) currently provides that the electronic filing requirements of Regulation S–T apply to ''[a]ny party (including natural persons, foreign private issuers and foreign governments) that files a document jointly with, or as a third party filer with respect to a registrant that is subject to mandated electronic filing requirements.'' For example, a foreign issuer named as a guarantor and co-registrant on a registration statement that pertains to a domestic issuer must currently file the registration statement and related documents on EDGAR.

[44] Rule 601(a) currently excepts foreign private issuers and foreign governments from the mandated EDGAR filing rules unless the foreign issuer is filing a document jointly with, or with respect to, a party that is the subject of mandated electronic filing. Rule 601(b) [17 CFR 232.601(b)] provides that a foreign private issuer or foreign government may choose to file electronically any document not required to be filed under Regulation S–T as long as the EDGAR Filer Manual contains an appropriate electronic form type. Rule 601(c) [17 CFR 232.601(c)] provides that if a foreign private issuer engages in an exchange offer, merger or other business combination with a domestic registrant, and the foreign private issuer files a Securities Act registration statement regarding this transaction, the foreign private issuer may file this registration statement in paper as long as the domestic registrant will not be subject to Exchange Act reporting requirements following the transaction.

[45] See Part II.B.5 below.

[46] See Part II.B.4 below for a discussion of MJDS forms.

[47] Foreign persons may also register securities on Form S–8 [17 CFR 239.16b] and S–11 [17 CFR 239.18] as well as on other registration statement forms normally used by U.S. issuers. Mandated EDGAR filing applies to these registration statements when filed by foreign issuers.

[48] Because Regulation S–T Rule 101(c)(15) [17 CFR 232.101(c)(15)] currently lists Form F–6 as a form to be filed in paper only, the adopted amendments will remove this provision and renumber the remaining provisions in Rule 101(c) accordingly.

voting, receipt of dividends and other distributions, and deposit and withdrawal of shares, and other material information such as the ratio of ordinary shares to ADRs and the amount of depositary fees. Mandated EDGAR filing of the Form F–6 registration statement will ensure the expeditious dissemination of this material information to investors and other interested parties.

We are revising the General Instructions to the Securities Act forms and Form 20–F to reference Regulation S–T and provide Commission telephone numbers that a foreign private issuer may call to obtain EDGAR access codes or to obtain assistance with EDGAR technical concerns or EDGAR rules.[49]

The Division of Corporation Finance (''Division'') currently permits first-time foreign registrants, upon request, to submit paper drafts of their initial Securities Act or Exchange Act registration statements for staff review on a non-public basis.[50] Although we did not discuss this policy in the Proposing Release, we received four comment letters that addressed the issue. All four urged the Division to continue its policy following the new rules' effective date.

In response to the above comments, the mandated electronic filing rules for foreign issuers will not affect the Division's confidential submission policy. Confidential submissions under the policy must be in paper format. When a foreign issuer later publicly files its registration statement under the Securities Act or the Exchange Act, the public filing must be in electronic format. At that time, the Division also will require a foreign issuer to file in electronic format as correspondence all letters in response to staff comments on the draft materials and other related correspondence.[51] The electronic filing of this correspondence with Division staff will facilitate further staff analysis and review of the foreign issuer's registration statements and reports filed with the Commission.

2. Form 6–K Reports

The adopted rule amendments will require the electronic submission of most reports on Form 6–K,[52] the Exchange Act form used by foreign issuers to submit periodic and current reports with the Commission.[53] As proposed, a foreign issuer will be able to submit in paper a Form 6–K with its annual report to security holders attached as an exhibit if the sole purpose of the Form 6–K was to deposit a copy of this report with the Commission.[54] We are also adopting another exception to mandated EDGAR filing of Form 6–K in response to comments received on this issue.

We have amended Form 6–K to permit a foreign issuer to submit a home country report or other document in paper under cover of a Form 6–K as long as the report or other document:

- Is not a press release;
- Is not required to be and has not been distributed to the foreign issuer's security holders; and
- If discussing a material event, including disclosure of annual audited or interim consolidated financial results, has already been the subject of a Form 6–K submission or other Commission filing on EDGAR.[55]

We added this exception in response to comments noting that a foreign issuer must submit a Form 6–K to report material information that the foreign issuer:

- Makes public or is required to make public under the laws of its home country;
- Files or is required to file with its home country stock exchange and which is made public by that exchange; or
- Distributes or is required to distribute to its security holders.[56]

According to these commenters, because of their home country regulations and customs, during any given year, most foreign issuers submit numerous Form 6–K reports, only some of which are the equivalent of the domestic company Form 10–Q reports that disclose interim financial information. Because foreign issuers must submit these home country ''statutory'' reports and other documents on Form 6–K promptly after they are made public in the home country,[57] these commenters believe that there is not enough preparation or ''lead'' time to translate these documents into English or prepare them for EDGAR submission. We believe that the additional exception described above will substantially address this concern and assist in reducing a foreign issuer's EDGAR costs while ensuring the rapid dissemination of all material information about a foreign issuer in U.S. capital markets.

We are also amending Form 6–K to provide a box for each of the permitted paper filing rules that a foreign issuer must check in order to facilitate the processing of the paper Form 6–K. The amended Form 6–K further references the requirements of Regulation S–T and provides telephone numbers that a foreign issuer may call for assistance concerning EDGAR.[58]

3. Securities Act Registration Statements and Exchange Act Registration Statements and Reports of Foreign Governments

The amendments will require foreign governments to file on EDGAR their Securities Act registration statements on Schedule B.[59] Foreign governments will

[49] See the new General Instruction II.C to Forms F–1 and F–2, new General Instruction II.D to Form F–3, new General Instruction II.4 to Form F–4, new General Instruction III.C to Form F–6, and new General Instruction D to Form 20–F. We have also slightly modified the General Instructions to Forms F–6 and 20–F to clarify that the pre-existing paragraphs that outline requirements concerning number of copies, paper, printing, or pagination, pertain solely to paper filings under hardship exemptions or as otherwise permitted. See also Regulation S–T Rule 309(a) [17 CFR 232.309(a)]. We have referenced the signature requirements for both electronic and paper filings in General Instruction D to Form 20–F. We also have revised each of the above forms to include a new instruction regarding the treatment of foreign language documents. See Part II.C.7, below.

[50] See the Division of Corporation Finance's (''Division's'') *Current Issues and Rulemaking Projects Quarterly Update,* Section V (March 31, 2001), which is located at www. sec.gov/divisions/corpfin/cfcrq032001.htm. See also the Division's *International Financial Reporting and Disclosure Issues,* Section III(B) (May 1, 2001), which is available at www.sec.gov./divisions/corpfin/internatl/issues0501.htm.

[51] Domestic issuers submit responses to comment letters electronically on an ongoing basis. Materials electronically furnished as correspondence become part of a non-public database to which only the Commission's staff has access unless the materials become subject to a successful request under the Freedom of Information Act. See 17 CFR 200.80.

[52] We have added a note to Regulation S–T Rule 101(a)(1)(iii) [17 CFR 101(a)(1)(iii)], which generally mandates EDGAR filing for Exchange Act documents, to clarify that foreign private issuers must file or submit their Form 6–K reports in electronic format, except as otherwise permitted by new Regulation S–T Rules 101(b)(1) and 101(b)(7).

[53] In addition to an annual report, Exchange Act reporting foreign companies must submit to the SEC on an ongoing basis, under cover of a Form 6–K, press releases, shareholder reports and other materials that contain information that is material to an investment decision. See Form 6–K, General Instruction B. Foreign companies publish these materials in their home countries in accordance with home market law or custom. By requiring foreign companies to file most Form 6–Ks on EDGAR, we will improve public access to these home market materials as well as all SEC-mandated reports, prospectuses and other documents.

[54] See new Regulation S–T Rule 101(b)(1).

[55] See new Regulation S–T Rule 101(b)(7) and the revised General Instruction C to Form 6–K.

[56] See General Instruction B to Form 6–K.

[57] See the third paragraph of the current Form 6–K General Instruction B.

[58] As discussed in Part II.C.2 below, we are further amending Form 6–K to explain the newly amended rules concerning the treatment of foreign language documents. We also are amending Form 6–K to provide that an issuer that is or will be incorporating by reference all or part of an annual or other report to security holders, or of a paper Form 6–K, into an electronic filing must file the incorporated portion in electronic format as an exhibit to the filing in accordance with new Regulation S–T Rule 303(b) [17 CFR 232.303(b)]. See Part II.B.10, below.

[59] 15 U.S.C. 77a *et seq.*, Schedule B.

further have to file electronically their Exchange Act registration statements on Form 18, their annual reports on Form 18–K, and any amendments to these Forms.[60]

Two commenters opposed extending mandated EDGAR filing to foreign governments primarily on the grounds that, because of language barriers, time zone differences, and cumbersome internal approval procedures, foreign governments face logistical and other difficulties in meeting their disclosure and reporting obligations under the U.S. federal securities laws. One of the commenters also noted that foreign governments have no experience in filing on EDGAR since they have not been able to do so even voluntarily. Accordingly, these two commenters urged the Commission to permit but not require foreign governments to file their securities documents on EDGAR.

After considering these comments, we have determined to adopt mandated EDGAR filing for foreign governments as proposed. We do not believe that the cited difficulties faced by foreign governments are significantly different than those that foreign private issuers may face when preparing their Securities Act and Exchange Act documents for filing with the Commission. Moreover, the same technological advances discussed above should serve to reduce the costs of EDGAR as much for foreign governments as for foreign private issuers. In addition, other accommodations for foreign issuers adopted or discussed in this release should further serve to diminish any difficulties confronted by foreign governments.

We are also adopting, as proposed, a requirement that a foreign government provide the following ''electronic filing'' information in its Schedule B registration statement:[61]

- The foreign filer must state that the SEC maintains an Internet site that contains reports, statements and other information regarding issuers that file electronically with the SEC; and
- The foreign filer must disclose the address for the SEC Internet site at (http://www.sec.gov).[62]

The instruction will also encourage the foreign filer to provide its own Internet address, if available.[63]

4. Multijurisdictional Disclosure System (''MJDS'') Forms

The adopted amendments will apply to MJDS filers as proposed. Under the new rule amendments, Canadian issuers that choose to use the MJDS must file electronically:

- Their Securities Act registration statements on Forms F–7, F–8, F–9, F–10, and F–80;
- Their Exchange Act registration statements and annual reports on Form 40–F; and
- Schedules 13E–4F, 14D–1F and 14D–9F, the tender offer forms under the MJDS.[64]

5. Schedules 13D and 13G and Tender Offer Schedules

Adopted as proposed, the amendments will mandate the filing on EDGAR of third party forms, whether filed by a domestic or foreign company, that pertain to a foreign private issuer, since a third party filer will no longer be able to claim an EDGAR exemption based on the underlying EDGAR exemption for foreign private issuers. Thus, domestic or foreign persons will have to file on EDGAR their Schedules 13D or 13G that pertain to the securities of foreign private issuers. Similarly, domestic and foreign bidders will have to file on EDGAR their Schedules TO[65] with respect to tender offers for securities of foreign private issuers. Foreign private issuers that are subject to tender offers, whether by domestic or foreign companies, will have to file their Schedules 14D–9[66] on EDGAR.

6. Form CB

Form CB is an exemptive form that both foreign and domestic persons must file when engaging in specified rights offerings, exchange offers or business combinations with respect to a foreign private issuer.[67] We proposed to require the EDGAR submission of Form CB[68] in two instances:

- If the party filing or submitting the Form CB is an Exchange Act reporting company; or
- If the foreign company that is the subject of the Form CB transaction is an Exchange Act reporting company.[69]

Most commenters that addressed this proposal urged that we generally permit rather than require the EDGAR filing of Form CB in order to encourage the use of the Form CB and the consequent participation of U.S. security holders in a cross-border transaction. After considering these comments, we have determined to require EDGAR filing for Form CB only when the party filing or submitting the Form CB is an Exchange Act reporting company. In most instances the party filing or submitting the Form CB will be the issuer, acquiror or bidder in the Form CB transaction. In some instances, however, the subject company of an exchange offer, business combination, or tender offer may elect to file or submit the Form CB in conjunction with or on behalf of the acquiror or bidder. In any of these instances, because the filer will already be familiar with EDGAR filing requirements, mandating the filing or submission of the Form CB on EDGAR should not pose an undue burden.

The amendments, as adopted, will also provide that a party that is not an Exchange Act reporting company may at its option file or submit the Form CB on

[60] 17 CFR 249.218 and 249.318.

[61] The required electronic filing instruction serves to inform an investor about the location of a foreign issuer's electronic filings with the Commission and possibly of a foreign issuer's web address as well. This information is particularly useful when a filer incorporates documents by reference into a registration statement. Because there is no form for a Schedule B registration statement, Division staff has outlined procedures for a Schedule B filer that seeks to incorporate by reference. A Schedule B filer that seeks to incorporate by reference must follow the staff's procedures outlined in a no-action letter that relates specifically to that filer. See, for example, the following no-action letters: *Province of Nova Scotia* (November 1, 1999); *Republic of Turkey* (October 19, 1999); and *Republic of South Africa* (October 4, 1999).

[62] New Securities Act Rule 493(b) and (c) [17 CFR 230.493(b) and (c)]. As discussed in greater detail in the Proposing Release, Part II.E, the adopted electronic filing instruction is substantially similar to that on Forms F–2, F–3, and F–4, each of which permits a filer to incorporate by reference other securities documents or exhibits into the registration statement. Regulation S–K Rule 101(e) [17 CFR 229.101(e)] further requires a registrant to provide this electronic filing information in any Securities Act registration statement. Since Regulation S–K [17 CFR 229.10–229.1016] generally does not apply to foreign issuers, and since there is no form that corresponds to the Schedule B registration statement, we have revised Rule 493 to provide for this electronic filing instruction. The adopted rule will also reference Regulation S–T's electronic filing requirements.

[63] New Securities Act Rule 493(c). See the Commission's interpretive release entitled ''Use of Electronic Media,'' Release No. 33–7856 (April 28, 2000) [65 FR 25843] for guidance on matters arising from the use of hyperlinks in connection with securities documents posted on an issuer's web site.

[64] We have amended the MJDS forms to reference Regulation S–T and to add conforming instructions similar to those added to the other Securities Act registration statements and Exchange Act Form 20–F. See also Parts II.C.6 and 7 below for revisions to the MJDS forms concerning the treatment of foreign language documents.

[65] 17 CFR 240.14d–100.

[66] 17 CFR 240.14d–101.

[67] See Securities Act Rules 801(a)(4) and 802(a)(3) [17 CFR 230.801(a)(4) and 230.802(a)(3)] and Exchange Act Rules 13e–4(h)(8)(iii), 14d–1(c)(3)(iii), and 14e–2(d) [17 CFR 240.13e–4(h)(8)(iii), 240.14d–1(c)(3)(iii), and 240.14e–2(d)].

[68] Similar to our treatment of Form 6–K reports (see Form 6–K General Instruction B), our rules currently treat information and documents furnished under Form CB as not ''filed'' with the Commission or otherwise subject to the liabilities of Exchange Act Section 18 [15 U.S.C. 78r]. See Form CB General Instructions I.B. The proposed amendments would not alter this treatment.

[69] See Proposing Release, Part II.B.4, discussing proposed Regulation S–T Rule 101(a)(1)(vi).

EDGAR.[70] A company that electronically files a Form CB, whether as a voluntary or mandated electronic filer, must file on EDGAR the home jurisdiction documents that are attached to the Form CB as well.

We are amending the cover page of Form CB to require a filer to indicate whether it is filing the Form CB in paper as permitted by the newly adopted rule. This will facilitate the proper processing of Form CB.[71]

7. Forms F–X and F–N

The amendments also will require that foreign private issuers file electronically, as proposed, two auxiliary forms, Forms F–X and F–N. Form F–X is the form for designating a U.S. agent for service of process that is required for an MJDS filer and specified other foreign filers.[72] Form F–N is the form for designating a U.S. agent for service of process by foreign banks and foreign insurance companies when they file registration statements under the Securities Act.[73]

There are two exceptions to the electronic filing requirement adopted for Form F–X. The first pertains to foreign issuers that must file Form F–X because they are Form CB filers. Since the amendments only require the filing or submission of Form CB on EDGAR when the filer is an Exchange Act reporting company, we have adopted the same requirement for the Form F–X that a foreign company must file along with a Form CB.[74] The amendments permit, but do not require, the filing or submission of Form F–X on EDGAR by a party that is not an Exchange Act company.[75]

The second Form F–X exception pertains to the requirement that a Canadian issuer submit a Form F–X when qualifying an offering statement pursuant to the provisions of Regulation A.[76] Because Regulation S–T currently requires the submission of Regulation A filings in paper only, the adopted amendments will permit a Canadian Regulation A filer to submit the required Form F–X in paper.[77]

As with Form CB, we are amending Form F–X to require the filer to indicate whether it is filing the Form F–X in paper as permitted by the new rule amendments. This will facilitate the proper processing of the Form F–X.

8. Trust Indenture Act Forms

The amendments, adopted as proposed, will require the filing on EDGAR of the following statements and applications regarding trustee eligibility and indenture qualification[78] under the Trust Indenture Act:[79]

- Forms T–1 and T–2[80] statements of trustee eligibility if submitted in connection with an indenture for which a foreign issuer is the obligor;
- Form T–3[81] to qualify an indenture covering a foreign issuer's securities sold in offerings that are exempt from registration under the Securities Act;[82] and
- Form T–6[83] used by foreign corporations and other foreign business entities to obtain authorization to act as a sole trustee under an indenture qualified or to be qualified under the Trust Indenture Act.

9. Reports of Supranational Entities

We proposed to permit, but not require, the submission on EDGAR of the reports that designated supranational entities are required to file with the Commission. Currently Regulation S–T permits only one of the supranational entities, the International Bank for Reconstruction and Development (''World Bank''), to file on EDGAR its annual and periodic reports and its reports concerning proposed distributions of its primary obligations.[84] As proposed, we are extending permissive electronic filing to the following five additional supranational entities that are also required to file reports with the Commission:[85]

- The Inter-American Development Bank;[86]
- The Asian Development Bank;[87]
- The African Development Bank;[88]
- The International Finance Corporation;[89] and
- The European Bank for Reconstruction and Development.[90]

10. Exhibits Incorporated by Reference

As proposed, the adopted amendments will afford to foreign filers the same treatment given to domestic filers regarding exhibits under Rule 102 of Regulation S–T.[91] We currently do not require a domestic filer to file electronically an exhibit previously filed in paper that is being incorporated by reference into the electronically filed document. As under the current rules, a foreign filer may voluntarily refile the exhibit on EDGAR.[92] Upon amending its articles of incorporation or bylaws, a foreign filer will have to restate these documents in electronic format.[93]

We are also adopting the amendment to Regulation S–T Rule 303(b),[94] which provides that if a foreign private issuer incorporates by reference into an

[70] New Regulation S–T Rule 101(b)(8) [17 CFR 232.101(b)(8)].

[71] Similar to our amendments of other Securities Act and Exchange Act forms, we also are amending Form CB to reflect the new EDGAR filing rules. The revisions to Form CB include clarifying that the instructions pertaining to number of copies, printing, pagination, and manual signatures apply solely to paper filings. For additional revisions to Form CB concerning the treatment of foreign language documents, see Part II.C.7 below.

[72] In addition to an MJDS filer, the following persons must file a Form F–X: a non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F, or 14D–9F; a foreign trustee regarding securities registered on an MJDS Securities Act registration statement; a Canadian issuer filing an offering statement under Regulation A [17 CFR 230.251–230.263] or a Form SB–2 registration statement [17 CFR 239.10]; and a foreign issuer or other non-U.S. person filing Form CB in connection with a tender offer, rights offering or business combination. See 17 CFR 239.42(d), (e), (f), and (g). In addition, under the Trust Indenture Act, specified Canadian trust companies acting as trustees under an indenture qualified or to be qualified under the Trust Indenture Act must file a Form F–X with the Commission. Trust Indenture Act Rule 260.10a–5(b) [17 CFR 260.10a–5(b)].

[73] Securities Act Rule 489 [17 CFR 230.489].

[74] New Regulation S–T Rules 101(a)(vii) [17 CFR 232.101(a)(vii)] and 101(b)(9) [17 CFR 232.101(b)(9)].

[75] New Regulation S–T Rule 101(b)(9)(i) [17 CFR 232.101(b)(9)(i).]

[76] 17 CFR 239.42(f) and 17 CFR 230.263(a).

[77] New Regulation S–T Rule 101(b)(9)(ii) [17 CFR 232.101(b)(9)(ii)].

[78] Regulation S–T Rule 101(a)(1)(ii) [17 CFR 232.101(a)(1)(ii)].

[79] 15 U.S.C. 77aaa *et seq.* In contrast, Regulation S–T Rule 101(c)(5) [17 CFR 232.101(c)(5)] currently requires the filing on paper of applications for exemptive relief pursuant to Sections 304 and 310 of the Trust Indenture Act 15 U.S.C. 77ddd and 77jjj, respectively]. This provision applies to both domestic and foreign filers and will remain the same under the adopted amendments.

[80] 17 CFR 269.1 and 269.2.

[81] 17 CFR 269.3.

[82] Rule 7a–1 [17 CFR 260.7a–1] under Trust Indenture Act Section 307(a) [15 U.S.C. 77ggg] authorizes the use of Form T–3.

[83] 17 CFR 269.9.

[84] Regulation S–T Rule 101(b)(6) [17 CFR 232.101(b)(6)]. The World Bank must submit these reports under the Rules and Regulations Pursuant to Section 15(a) of the Bretton Woods Agreements Act [17 CFR 285] and, in particular, 17 CFR 285.2 and 285.3.

[85] New Regulation S–T Rule 232.101(b)(6)(i) through (vi) [17 CFR 232.101(b)(6)(i) through 232.101(b)(6)(vi)].

[86] See General Rules and Regulations Pursuant to Section 11(a) of the Inter-American Development Bank Act [17 CFR 286].

[87] See General Rules and Regulations Pursuant to Section 11(a) of the Asian Development Bank Act [17 CFR 287].

[88] See General Rules and Regulations Pursuant to Section 9(a) of the African Development Bank Act [17 CFR 288].

[89] See General Rules and Regulations Pursuant to Section 13(a) of the International Finance Corporation Act [17 CFR 289].

[90] See General Rules and Regulations Pursuant to Section 9(a) of the European Bank for Reconstruction and Development Act [17 CFR 290].

[91] 17 CFR 232.102.

[92] Rule 102(a) of Regulation S–T [17 CFR 232.102(a)].

[93] This is consistent with the treatment of domestic issuers. Regulation S–T Rule 102(c) [17 CFR 232.102(c)].

[94] New Regulation S–T Rule 303(b) [17 CFR 232.303(b)].

electronic filing any portion of an annual or other report to security holders, or of a paper Form 6–K, it must file the incorporated portion in electronic format as an exhibit to the filing. Again, this comports with the treatment afforded to domestic companies.[95] A foreign private issuer should consider this provision when determining whether to submit a Form 6–K report in paper.

11. Hardship Exemptions

The adopted amendments do not alter the provisions governing the availability of hardship exemptions under Regulation S–T, as proposed. A foreign issuer that meets the requirements of Section 201 or 202 of Regulation S–T [96] may obtain a temporary or continuing hardship exemption from the EDGAR filing requirements.[97]

As is the case with domestic filers, we expect to grant hardship exemptions for foreign issuers infrequently.[98] Moreover, as is the case with domestic filers, our filing desk will not accept in paper format any filing submitted by a foreign issuer that must be filed electronically pursuant to Regulation S–T Items 100 and 101 unless the filing satisfies the requirements for a temporary or continuing hardship exemption under Regulation S–T.[99]

12. Documents Submitted Pursuant to Exchange Act Rule 12g3–2(b)

We proposed to continue our current practice of requiring foreign private issuers to submit on paper their applications and supporting documents for the exemption pursuant to Exchange Act Rule 12g3–2(b).[100] While two commenters favored either permissive or mandated EDGAR filing of these documents, we continue to believe that a ''paper filing only'' rule for Exchange Act Rule 12g3–2(b) documents is the correct approach. A foreign company that has received a Rule 12g3–2(b) exemption is afforded only limited access to U.S. capital markets. It also is not subject to the Commission's disclosure requirements for Exchange Act reporting companies. Consequently, there is less need for electronic access to the submissions that a Rule 12g3–2(b) company must make to the Commission in order to maintain its exempt status. This treatment is consistent with, and analogous to, our current treatment of applications for an exemption from Exchange Act reporting obligations filed pursuant to Exchange Act Section 12(h).[101] Accordingly, the adopted amendments, as proposed, will not affect Exchange Act Rule 12g3–2(b) submissions.

C. Treatment of Foreign Language Documents

Regulation S–T Rule 306 governs the treatment of foreign language documents for electronic filings. This rule currently prohibits the filing of foreign language documents in electronic format. It also requires the electronic submission of a fair and accurate English translation of any document, required as an exhibit or attachment to a filing, that is in a foreign language.[102] Thus, under Rule 306, an electronic filer currently does not have the option afforded to paper filers of submitting an English summary or ''version'' of a foreign language document instead of an English translation.[103] The proposed amendments would have subjected foreign issuers filing or submitting their securities documents on EDGAR to Rule 306's English translation requirement and prohibition against foreign language documents. We further proposed to eliminate the option of providing an English summary or version instead of an English translation of a foreign language document under the paper filing rules in order to keep the electronic and paper requirements consistent.[104]

We received the largest number of comments on this proposed treatment of foreign language documents of all the issues raised by the proposing release. Nineteen commenters generally opposed the elimination of the English summary or version option on the grounds that the costs of translating into English every foreign language document required as an exhibit or attachment to a filing would be excessive and constitute an undue burden on foreign issuers. Several of these commenters also stated that the elimination of the English summary or version option would cause delays in the completion, and preclude the timely filing, of registration statements and reports.

However, many of these commenters also agreed with our position that, as reflected in current Commission practice, some exhibits are too important to be the subject of an English summary or version. Most of these commenters urged us to adopt a rule that would codify this position by specifying those documents that could and could not be the subject of an English summary or version. Several of these commenters also agreed with our examples of exhibit categories that are too important to be the subject of an English summary or version.

1. The Adopted ''English Summary'' Option

After consideration of the above comments, we have determined to adopt a limited English summary option for Division of Corporation Finance filings and submissions that is the same for both electronic and paper filers and provides guidance on which exhibits may be summarized. We are amending Regulation S–T Rule 306(a) to provide that all electronic filings or submissions must be in the English language, except as otherwise provided by this rule.[105] We are further amending this rule to provide that if a filing or submission requires the inclusion of a document that is in a foreign language, a party

[95] See the current version of Regulation S–T Rule 303(b) and Note 2 of General Instruction G to the Form 10–K annual report. We are adding a similar Note to Form 6–K.

[96] 17 CFR 232.201 or 232.202. An EDGAR filer may obtain a temporary hardship exemption if it experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing. See 17 CFR 232.201(a). An EDGAR filer may apply for a continuing hardship exemption if it cannot file all or part of a filing without undue burden or expense. See 17 CFR 232.202(a).

[97] A filer obtains a temporary hardship exemption by filing a properly legended paper copy of the filing under cover of Form TH pursuant to Regulation S–T Rule 201. In contrast to this self-executing process, a filer can only obtain a continuing hardship exemption by submitting a written application pursuant to Regulation S–T Rule 202, upon which the Commission staff must then act pursuant to delegated authority.

[98] In addition to pursuing a hardship exemption, a filer that has in good faith attempted to submit a filing in a timely manner but has experienced a delay due to technical conditions beyond its control may request a filing date adjustment pursuant to Regulation S–T Rule 13(b) [17 CFR 232.13(b)].

[99] Rule 14 of Regulation S–T [17 CFR 232.14]. We have amended Forms 6–K, CB, and F–X to state that if filing the form under a hardship exemption, the filer must include the legend required by Regulation S–T Rule 201 or 202 on the form's cover page.

[100] 17 CFR 240.12g3–2(b). This rule provides an exemption from Section 12(g) of the Exchange Act [15 U.S.C. 78*l*(g)] for foreign private issuers that have not chosen to access the U.S. capital markets. After providing the Commission with information about its home country disclosure requirements and U.S. shareholder information, a qualifying applicant receives an exemption from Exchange Act reporting upon the condition that it furnish to the Commission on an ongoing basis its securities documents required to be furnished or that it furnishes voluntarily in its home country.

[101] 15 U.S.C. 78*l*(h). We require the filing of Section 12(h) exemptive applications in paper pursuant to Regulation S–T Rule 101(c)(17) [17 CFR 232.101(c)(17)]. Although the basis for Exchange Act Rule 12g3–2(b) is Exchange Act Section 12(g)(3) [15 U.S.C. 78*l*(g)(3)], this statutory section is analogous to Exchange Act Section 12(h).

[102] Regulation S–T Rule 306(a) [17 CFR 232.306(a)].

[103] See current Securities Act Rule 403(c) and Exchange Act Rule 12b–12(d).

[104] See Proposing Release, Parts II.D.1 and 2 for a discussion of, and reasons for, this proposal.

[105] New Regulation S–T Rule 306(a).

must submit a fair and accurate English translation of the foreign language document in accordance with the rules governing the treatment of foreign language documents.[106] The amended rule further provides that, alternatively, if the foreign language document is an exhibit or attachment to a filing or submission to the Division of Corporation Finance, a party may provide a fair and accurate English summary of the foreign language document if permitted by the foreign language rules.[107]

We also are amending the foreign language rules to provide that a Division of Corporation Finance filer must not summarize the following documents (and their amendments):[108]

- Articles of incorporation, memoranda of association, bylaws, and other comparable documents, whether original or restated;
- Instruments defining the rights of security holders, including indentures qualified or to be qualified under the Trust Indenture Act of 1939;
- Voting agreements, including voting trust agreements;
- Contracts to which directors, officers, promoters, voting trustees or security holders named in a registration statement are parties;
- Contracts upon which a filer's business is substantially dependent;
- Audited annual and interim consolidated financial information; and
- Any document that is or will be the subject of a confidential treatment request under Securities Act Rule 406 [109] or Exchange Act Rule 24b–2.[110]

This list largely comprises the examples of important foreign language documents mentioned in the proposing release. However, we have added to this list two categories of material contract exhibits: contracts upon which a filer's business is substantially dependent and related party contracts.[111] We believe that agreements falling into these categories should not be summarized. While a filer may provide a detailed summary of these contracts in the body of the registration statement or report, their importance requires the filing or submission of a corresponding full English translation as an exhibit to which an investor or other interested party can refer for further information.

We have narrowed the scope of one exhibit category on the ''mandatory English translation'' list in response to comments. In the proposing release, we included exhibits containing financial statements on this list.[112] Although some commenters agreed with us, others pointed out that some ''statutory report'' exhibits may contain unconsolidated financial information about a parent company that is of questionable materiality. These comments have persuaded us to require the English translation only of exhibits disclosing annual audited or interim consolidated financial information. This requirement will ensure that investors have electronic access to full English translations of financial information about foreign issuers that is comparable to the financial information required by domestic issuers in their periodic reports.

We are further amending the foreign language rules to provide that a Division of Corporation Finance filer may submit an English summary instead of an English translation of a foreign language document as an exhibit or attachment to a filing as long as the foreign language document does not consist of any of the proscribed subject matter enumerated in these rules [113] or the applicable form permits the use of an English summary.[114] These rules will also provide that any English summary submitted must:

- Fairly and accurately summarize the terms of each material provision of the foreign language document; and
- Fairly and accurately describe the terms that have been omitted or abridged.[115]

These conditions are consistent with current staff practice.[116]

Under these amendments, electronic and paper filers must provide either an English translation or English summary, if permitted, of a foreign language document. A filer will no longer be able to provide an English ''version'' or something that falls short of being a fair and accurate English summary as required by the above rules. Although some commenters requested that we retain the English ''version'' option, we have decided to eliminate it because of the vagueness of the term ''version'' and the general lack of utility that has characterized those abbreviated English ''versions'' of foreign language documents that foreign issuers have occasionally submitted.[117]

2. The Amended Form 6–K

Under the proposed amendments, a foreign private issuer would have to provide an English translation of any report or other document that was in a foreign language and required to be submitted under Form 6–K whether in electronic or paper format. Some commenters objected to this proposal because it would eliminate a foreign issuer's ability to submit under Form 6–K:

- An English summary or version of a foreign language press release or communication distributed directly to shareholders; and
- A brief description of any other foreign language report or document, such as a statutory report or an offering circular or prospectus relating solely to an offering outside the United States (a ''foreign'' offering), if no English language translation, summary or version is available.[118]

Noting that a foreign issuer typically submits several Form 6–Ks annually, these commenters expressed concern that an ''English translation only'' requirement would cause a foreign issuer to incur excessive translation expenses and delay the filing of a Form 6–K. Accordingly, these commenters requested that we retain the current version of Form 6–K's instructions regarding the treatment of foreign language documents in their entirety.

---

[106] Securities Act Rule 403(c) and Exchange Act Rule 12b–12(d) (referred to as the ''foreign language rules''). The sole exception relates to the treatment of a foreign government's annual budget. See new Regulation S–T Rule 306(c) and Part II.C.5, below, for further discussion.

[107] Accordingly, we will continue to require investment companies and other persons making filings or submissions to the Division of Investment Management to submit full English translations of foreign language prospectuses or other foreign language documents included in their filings or submissions.

[108] New Securities Act Rule 403(c)(2) [17 CFR 230.403(c)(1)] and new Exchange Act Rule 12b–12(d)(2) [17 CFR 240.12b–12(d)(1)].

[109] 17 CFR 230.406.

[110] 17 CFR 240.24b–2.

[111] See Form 20–F Exhibit Instructions 4(b)(i) and (ii), respectively, for a description of related party contracts and substantial dependency contracts. As used in the foreign language rules, these two categories of contracts have the same meaning as the contracts described in the above Form 20–F exhibit instructions.

[112] See Proposing Release, Part II.D.2., the text following n.111.

[113] New Securities Act Rule 403(c)(2) and Exchange Act Rule 12b–12(d)(2).

[114] New Securities Act Rule 403(c)(3)(i) [17 CFR 230.403(c)(2)(i)] and new Exchange Act Rule 12b–12(d)(3)(i) [17 CFR 240.12b–12(d)(2)(i)].

[115] New Securities Act Rule 403(c)(3)(ii) and new Exchange Act Rule 12b–12(d)(3)(ii). A filer will also have to identify a submission as either an English summary or English translation of a foreign language document. New Securities Act Rule 403(c)(4) [17 CFR 230.403(c)(4)] and new Exchange Act Rule 12b–12(d)(4) [17 CFR 240.12b–12(d)(4)].

[116] See, for example, Telephone Interpretation No. M.6. in the Division of Corporation Finance Manual of Publicly Available Telephone Interpretations (July 1997), which is available on our web site located at http://www.sec.gov/interps/telephone/1997manual.txt. This telephone interpretation provides that an English summary must summarize each section of an exhibit just as an English translation must translate each section.

[117] We discussed these reasons in Proposing Release, Part II.D.2, the text following n.110.

[118] Current General Instruction D to Form 6–K.

However, we received other comments that distinguished between types of documents regularly submitted under Form 6–K. For example, one foreign firm stated that, because press releases are typically short and are already made available in English by many foreign private issuers as a matter of course, it would not object to a requirement to provide a full English translation for a press release submitted under Form 6–K. Another commenter noted the important distinction that General Instruction D made between press releases and direct shareholder communications on the one hand, and statutory reports and other ''public information'' documents on the other, when urging us to require the EDGAR submission of the former but not the latter category of documents.

After considering these comments, we have determined to retain the English summary option for some of the documents submitted under Form 6–K. Therefore, we are amending Form 6–K General Instruction D to provide that a foreign private issuer must submit a full English translation of the following documents under Form 6–K whether submitted electronically or in paper: [119]

- Press releases;
- Communications and other documents distributed directly to security holders for each class of securities for which a reporting obligation under the Exchange Act exists, except for offering circulars and prospectuses that relate entirely to foreign offerings; and
- Documents disclosing annual audited or interim consolidated financial information.[120]

We have included direct shareholder communications in the ''English translation only'' group of documents because when a foreign company determines to communicate with its shareholders, the communication is presumably of sufficient importance to warrant requiring electronic access to that document. Moreover, like press releases, a foreign private issuer will more likely than not prepare an English translation of direct shareholder communications for its U.S. shareholders as a matter of course.

New Instruction D to Form 6–K further permits an issuer to furnish under cover of a Form 6–K,[121] whether submitted electronically or in paper, an English summary instead of a full English translation of a report required to be furnished and made public under the laws of the issuer's home country or the rules of the issuer's home country stock exchange, so long as it is not a press release and is not required to be and has not been distributed to the issuer's security holders. Such a document may include a report disclosing unconsolidated financial information about a parent company.[122]

A few commenters expressed their concern that, by eliminating the ''English summary, version or brief description'' option, we would be requiring the full English translation of offering circulars or prospectuses that pertained solely to foreign offerings. In response to these comments, we are further amending Form 6–K General Instruction D to clarify that a foreign private issuer is not required to submit under cover of Form 6–K an offering circular or prospectus that pertains solely to a foreign offering, even when an English translation or English summary is available, if the issuer has already submitted a Form 6–K, Form 20–F or other Commission filing on EDGAR that reported material information disclosed in the offering circular or prospectus. If an issuer has not previously submitted such a filing, the issuer may submit in electronic format under a Form 6–K an English translation or English summary of the portion of the foreign offering circular or prospectus that discloses new material information.[123]

Under the adopted amendments, a foreign private issuer may no longer submit a brief description of a foreign language document under cover of Form 6–K. We have determined to eliminate the ''brief description'' option for the same reasons that we are eliminating the ''English version'' option.[124] Moreover, the above revisions to Form 6–K should eliminate much of the previous need for the ''brief description'' option while providing useful information, since a foreign private issuer will only have to submit an English summary of that portion of a foreign offering circular or statutory report that contains new material information instead of the entire document.

3. Submission of Unabridged Foreign Language Documents

We solicited comment on whether we should enable a foreign issuer to submit a paper copy of the unabridged foreign language document under cover of Form SE when electronically filing an English summary of the document. Several commenters supported this option, noting the legal importance of the unabridged foreign language version.

Accordingly, we are amending Regulation S–T Rule 306 to provide that a party may at its option submit a paper copy of the unabridged foreign language document under cover of Form SE when electronically submitting an English summary or English translation of that document.[125] We also encourage filers to put these foreign language documents on their own corporate web sites in order for this information to be readily available to public investors. However, the filing or submission of an unabridged foreign language document with the Commission or the posting of this document on a company's web site will not correct an incomplete or inaccurate English summary or translation included in an EDGAR filing or submission.

4. Elimination of Written Representation Requirement

Regulation S–T Rule 306 currently requires a designated officer of an electronic filer to certify in writing that a filed English translation is a fair and accurate translation of a foreign language document.[126] We proposed to

[119] This is in addition to the list of documents specified in Exchange Act Rule 12b–12(d)(2).

[120] See the new General Instruction D to the Form 6–K attached to this release. We have listed annual audited and interim consolidated financial information on Form 6–K even though it is also listed under Exchange Act Rule 12b–12(d)(2) for ease of use.

[121] This is in addition to the documents specified in Exchange Act Rule 12b–12(d)(2) [17 CFR 240.12b–12(d)(2)].

[122] Under the newly revised Form 6–K, a parent foreign private issuer will be able to submit in paper an English summary of a statutory report that contains, for example, unconsolidated financial information, as long as it has already electronically submitted a press release disclosing any new, material information contained in the statutory report. See new Regulation S–T Rule 101(b)(7) and new General Instruction C to Form 6–K.

[123] New General Instruction D to Form 6–K. For example, if a foreign issuer making a foreign offering that is material uses an offering circular containing material information about the issuer that is reflected in an already filed Form 20–F or Form 6–K, the issuer could submit on Form 6–K a summary of the offering. This instruction further provides that any submitted English summary under Form 6–K must meet the requirements of Exchange Act Rule 12b–12(d)(3)(ii).

[124] See Part II.C.1 above, the text preceding n. 117.

[125] New Regulation S–T Rule 306(b) [17 CFR 232.306(b)]. We are also amending Regulation S–T Rule 311, which governs the use of Form SE, to reflect this amendment. New Regulation S–T Rule 311(f) [17 CFR 232.311(f)]. We are further amending Securities Act Rule 403(c) and Exchange Act Rule 12b–12(d) to permit a paper filer to submit a copy of the unabridged foreign language document along with an English summary or English translation. New Securities Act Rule 403(c)(4) [17 CFR 230.403(c)(4)] and new Exchange Act Rule 12b–12(d)(4) [17 CFR 240.12b–12(d)(4)]. Finally, as proposed, we are amending the above paper filing rules and Regulation S–T Rule 306 to state that a filer must provide a copy of any foreign language document upon the request of Commission staff.

[126] Current Regulation S–T Rule 306(a).

extend this written representation requirement to foreign issuers filing electronically as well as to any paper filing that included an English translation exhibit or attachment.

Ten commenters opposed this proposal, primarily on the grounds that the written representation requirement is unnecessary because of the signature requirements and liability provisions under the Securities Act and the Exchange Act. We generally agree with these commenters and are eliminating the written representation requirement for both foreign and domestic issuers, whether filing electronically or in paper.[127] The antifraud and signature provisions of the Securities Act and Exchange Act should afford sufficient deterrence and protection against the making of misleading and fraudulent misrepresentations in securities documents as a result of false or misleadingly incomplete translations or summaries of foreign language documents.[128] Of course, we expect foreign and domestic issuers and their advisors to continue to be responsible for translations and to take adequate steps to assure the accuracy of translations to their satisfaction.

5. Submission of a Foreign Government's Annual Budget

As proposed, newly adopted Regulation S–T Rule 306 will continue to require a foreign government or its political subdivision to file electronically a fair and accurate English translation of its latest annual budget as Exhibit B in Form 18 or Exhibit (c) in Form 18–K, but only if an English translation is available. If an English translation is not available, the adopted amendment will require a foreign government or political subdivision to submit a copy of the foreign language version of its latest annual budget in paper under cover of Form SE,[129] so that any interested party may examine it, as proposed.[130]

6. Permitted Inclusion of French and English Text in MJDS Forms

Some commenters generally expressed their interest in being able to file foreign language documents on EDGAR.[131] One commenter requested that we at least permit the filing on EDGAR of a document that contains provisions in both English and a foreign language when the home country requires a document to be prepared in both languages.

Currently EDGAR official filings can only use foreign language characters that are recognized by HTML version 3.2.[132] At this time we have determined to permit the use of a foreign language in an electronic filing only when a Canadian issuer includes in an MJDS filing that is electronically formatted as an HTML document both French and English text because this dual language use is necessary to comply with the requirements of the Canadian securities administrator or other Canadian authority. This limited acceptance of foreign language text in EDGAR documents meets the demands of the MJDS system, which permits qualified Canadian issuers to use their home country securities documents to meet U.S. disclosure and reporting requirements. Accordingly, we are adopting an amendment to Regulation S–T Rule 306 to permit the electronic filing of a document containing both French and English text in this case.[133]

7. Conforming Amendments to Securities Act and Exchange Act Forms

In order to reflect the amended treatment of foreign language documents, we are amending the Securities Act and Exchange Act forms by adding explanatory paragraphs stating that:

- The registration statement or report must be in the English language, as required by the foreign language rules discussed above;
- If the registration statement or report requires the inclusion, as an exhibit or attachment, of a document that is in a foreign language, the issuer must provide instead either an English translation or an English summary of the foreign language document in accordance with the foreign language rules; and
- The issuer may submit a copy of the unabridged foreign language document along with the English translation or English summary as permitted by the foreign language rules.[134]

We are similarly amending the MJDS forms and schedules[135] by inserting comparable explanatory paragraphs.[136]

Form CB currently permits the submission of English summaries of documents that, under the home jurisdiction requirements, must be made public but need not be disseminated to security holders.[137] It also requires the furnishing to the Commission of any documents incorporated by reference into the home jurisdiction documents.[138] The issuer, acquiror, bidder or subject company submitting the Form CB need not publicly disseminate the incorporated documents to security holders.[139] While the home jurisdiction documents that are disseminated to security holders must be in English, documents that are

[127] New Regulation S–T Rule 306(a), new Securities Act Rule 403(c), and new Exchange Act Rule 12b–12(d).

[128] The primary antifraud provisions are in Securities Act Sections 11, 12(a)(2), 15, and 17 [15 U.S.C. 77k, 77*l*(a)(2), 77o, and 77q] and Exchange Act Sections 10, 18, and 20 [15 U.S.C. 78j, 78r, and 78t]. The primary signature provisions are in Securities Act Section 6(a) [15 U.S.C. 77f(a)] and in Securities Act Rule 402(e), Exchange Act Rule 12b–11(d), and Regulation S–T Rule 302.

[129] Accordingly, we are amending Rule 311 to allow the paper filing of the foreign language annual budget exhibit under cover of Form SE. New Regulation S–T Rule 311(h) [17 CFR 232.311(h)]. We are further amending Exchange Act Rule 12b–12(d)(5) to require the submission of the foreign language annual budget exhibit with a paper filing when no English translation is available. New Exchange Act Rule 12b–12(d)(5) [17 CFR 240.12b–12(d)(4)].

[130] New Regulation S–T Rule 306(c). As explained in the Proposing Release, Form 18–K instructs a foreign government to submit its annual budget in the foreign language if no English translation is available. Form 18–K, Exhibit Instructions, paragraph (c) as discussed in Proposing Release, Part II.D.1., the text accompanying n. 104.

[131] For the most part, these commenters urged us to permit the filing of foreign language documents in PDF. Others requested that we permit the submission of unabridged foreign language documents in paper under specified circumstances. See Part II.C.3 above.

[132] See current Regulation S–T Rule 306(b). See also Release No. 33–7855.

[133] New Regulation S–T Rule 306(d) [17 CFR 230.306(d)]. We also are adopting conforming amendments to the corresponding Securities Act and Exchange Act rules in order to permit the same dual language use in MJDS documents filed in paper. New Securities Act Rule 403(c)(5) [17 CFR 230.403(c)(5)] and new Exchange Act Rule 12b–12(d)(6) [17 CFR 240.12b–12(d)(6)].

[134] See new General Instructions II.D. to Forms F–1 and F–2, new General Instruction II.E. to Form F–3, new General Instruction D.5. to Form F–4, new General Instruction D. and Instructions as to Exhibits to Form 20–F, and General Instruction D to Form 6–K.

[135] See new General Instruction II.G. to Form F–7, new General Instruction IV.I. to Form F–8, new General Instructions II. I to Forms F–9 and F–80, new General Instruction II.J. to Form F–10, new General Instruction II.E. to Schedules 13E–4F and 14D–1F, and new General Instruction II.C. to Schedule 14D–9F.

[136] Unlike the other Securities Act and Exchange Act documents, the MJDS instructions state that a filer may provide an English translation or summary of a foreign language document if permitted by the rules of the applicable Canadian securities adminsitrator. Since the Canadian requirements govern most of the form and content of the MJDS documents, we have determined that the Canadian rules should govern the treatment of foreign language documents as well.

[137] Form CB, Part II(1).

[138] Form CB, Part II (2).

[139] Form CB, Part I, Item 1(a).

incorporated by reference into the home jurisdiction documents may be in a foreign language.[140]

We are amending Form CB to conform it to the adopted rules concerning the treatment of foreign language documents. We are also amending Regulation S–T Rule 311 to provide that a party may submit a copy of an unabridged foreign language document under cover of Form SE if permitted by the applicable form as well as when submitting an English translation or summary.[141] This amendment will enable the paper submission of a foreign language document that has been incorporated by reference into an electronically submitted Form CB or that is the subject of an English summary permitted by Form CB.[142]

D. Transition Period

We proposed that the amendments would become effective for filings or submissions made four months from their date of adoption. Eleven commenters responded that this four month transition period was too short. In response to these comments, we have determined to adopt an effective date of Monday, November 4, 2002. The new rule amendments will apply to any securities documents filed or submitted on or after November 4, 2002. We believe that approximately six months is a more than sufficient period to enable a foreign issuer to prepare itself to use the EDGAR system and electronically format a document for the foreign issuer's first EDGAR submission or hire a filing agent to conduct or assist in the EDGAR submission.[143] We encourage foreign issuers to file their securities documents voluntarily during the transition period or to submit test filings during this period.[144]

We also proposed to permit registrants that have filed their registration statements in paper before the proposed rules' effective date to continue to file their pre-effective amendments in paper for a limited period of time, for example, one month, following the proposed rules' effective date until their registration statements are effective.[145] One commenter opposed this proposal on the grounds that a registrant filing in paper before the rules' effective date should have an indefinite period in which to complete its paper filing. While we do not believe that an indefinite period of time is justified, we have determined to permit a registrant filing its registration statement in paper before the rules' effective date to complete its filing in paper through Tuesday, December 31, 2002. If the registration statement becomes effective before then, a filer could also file in paper its prospectus submitted pursuant to Securities Act Rule 430A[146] or Rule 424[147] through December 31, 2002. However, on or after Wednesday, January 1, 2003, a registrant will have to file any amendment, whether pre-effective or post-effective, or prospectus supplement in electronic format.

E. The Commission's Electronic Filing Hours

The Commission currently accepts EDGAR filings by direct transmission from 8:00 a.m. until 10:00 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is in effect, every day except for Saturdays, Sundays and federal holidays.[148] In contrast, paper and magnetic cartridge filings must be submitted by 5:30 p.m.[149] Most EDGAR filings submitted by direct transmission after 5:30 p.m. receive the next day's date as the official date of filing.[150]

Although we did not propose to change the Commission's filing hours for electronic filings made by direct transmission, we solicited comment regarding the adequacy of the Commission's EDGAR filing hours.[151] We received eleven comment letters that requested us to extend EDGAR's filing hours. Eight of these commenters requested that we extend the EDGAR filing hours either to 24 hours a day, seven days a week, or to 24 hours a day, Monday through Friday. Other commenters requested that we extend EDGAR's filing hours by at least a few hours. Most of these commenters justified extended EDGAR filing hours on the grounds that the business hours of many foreign issuers overlap minimally or not at all with the EDGAR filing hours.

In consideration of these comments, we are currently assessing the feasibility of extending the EDGAR filing hours for direct transmission filings. While we are aware that many foreign issuers use the assistance of filing agents based in the United States to submit their filings in a timely fashion, we also understand that this option may not be as readily available to other foreign issuers. We hope in the future to address further the issue of extending the EDGAR filing hours as part of our ongoing efforts to improve the EDGAR system.

F. Elimination of the Paper Filing Requirement for First-Time EDGAR Filers

As part of an ongoing assessment of some technical aspects of the EDGAR rules and the EDGAR system, we have determined to eliminate the requirement that an EDGAR filer must submit a paper copy of its first electronic filing to the Commission.[152] It appears that this requirement imposes an expense upon EDGAR filers without yielding any tangible benefits. Therefore, upon the publication of the rule amendments in the **Federal Register**, a first-time EDGAR filer, whether domestic or foreign, will not have to submit a paper copy of its EDGAR filing.[153]

III. Paperwork Reduction Act Analysis

The amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction

[140] Compare Part I, Item 1(a) with Part II (2).

[141] New Regulation S–T Rule 311(f).

[142] See the New Note following Part II (2) of Form CB and new Part II(1) of Form CB.

[143] The effective date of the new rules will occur over one year and one month from the date that we first proposed them on September 28, 2001. Foreign issuers have had since the proposing date to begin learning about the EDGAR requirements. The length of time that will have elapsed between the dates of the proposing and adopting releases reinforces our view that the six month transition period is sufficient.

[144] See Section 5.11.4 of the EDGAR Filer Manual (Release 8.2), Volume I for further information about test filings on EDGAR.

[145] See Proposing Release, Part II.H.

[146] 17 CFR 230.430A.

[147] 17 CFR 230.424.

[148] Regulation S–T Rule 12(c) [17 CFR 232.12(c)]. See also Securities Act Rule 110(c) [17 CFR 230.110(c)] and Exchange Act Rule 0–2(c) [17 CFR 240.0–2(c)].

[149] Regulation S–T Rule 12(b) [17 CFR 232.12(b)]. See also Securities Act Rule 110(b) [17 CFR 230.110(b)] and Exchange Act Rule 0–2(b) [17 CFR 240.0–2(b)].

[150] Regulation S–T Rule 13(a)(2) [17 CFR 232.13(a)(2)]. The one exception pertains to filings made pursuant to Securities Act Rule 462(b) [17 CFR 230.462(b)], which automatically become effective upon filing. If made between 5:30 p.m. and 10 p.m., these Rule 462(b) filings are deemed filed on the same business day. See Regulation S–T Rule 13(a)(3) [17 CFR 232.13(a)(3)].

[151] Proposing Release, Part II.C.

[152] This requirement is set forth in Regulation S–T Rule 101(d) [17 CFR 232.101(d)].

[153] The rule amendments will remove Regulation S–T Rule 101(d) in its entirety. This amendment will become effective on the date of publication in the **Federal Register**. Under the Administrative Procedure Act (''APA''), notice of proposed rulemaking is not required for ''rules of agency * * * procedure.'' 5 U.S.C. 553(b)(A). The requirement that an EDGAR filer submit a paper copy of its first electronic filing to the Commission was solely for the Commission's benefit. Under the APA, the Commission may establish an effective date of less than 30 days after the publication of the amendments if the amendment ''relieves a restriction.'' 5 U.S.C. 553(d)(1). Since eliminating the requirement of a paper filing ''relieves a restriction,'' the amendment is effective upon publication in the **Federal Register**. For similar reasons, we are adopting new Regulation S–T Rules 101(b)(10) and 101(c)(9), which concern the voluntary EDGAR filing of Form 25, without notice and comment. These rules are also effective upon publication in the **Federal Register.**

Act of 1995 (''PRA'').[154] We published a notice requesting comment on the collection of information requirements in the Proposing Release, and submitted these requirements to the Office of Management and Budget (''OMB'') for review.[155] Subsequently, OMB approved the proposed information collection requirements.

As discussed in Part II above, we received several comment letters regarding the proposed amendments. We have revised the amendments in response to these comments. In particular, the adopted amendments permit the submission of an English summary of specified foreign language documents whereas the proposed amendments would have required a full English translation of any foreign language document required to be submitted as an exhibit or attachment to Securities Act and Exchange Act forms.[156] We are revising our previous burden estimates primarily because of this change. We are submitting the revised estimates to the OMB for approval.

The titles of the information collections affected by the proposed amendments were the EDGAR Forms ID, ET, SE and TH,[157] Securities Act Form F–1,[158] and Exchange Act Form 20–F.[159] The changes made to the proposed amendments do not alter the burden estimates for Forms ID, ET, SE and TH previously submitted to and approved by the OMB.[160] The changes do affect the burden estimates for Securities Act Form F–1 and Exchange Act Form 20–F. In addition, because several commenters stated that the elimination of the ''English version or brief description'' requirement would increase their burdens when submitting statutory reports and other documents under cover of Form 6–K, we have prepared and are submitting burden estimates for this information collection to the OMB as well.

We have based our estimates of the effects that the amendments will have on these information collections primarily on our review of actual filings of these forms, the forms' requirements, and on the most recently completed Paperwork Reduction Act submissions for these forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Form F–1 (OMB Control No. 3235–0258) is used by a foreign private issuer to register its initial public offering or a subsequent offering of securities under the Securities Act. In addition to requiring the disclosure of material information about the registrant, Form F–1 also requires the attachment of numerous exhibits, including copies of the registrant's memoranda of association, articles of incorporation, and material contracts.

Form 20–F (OMB Control No. 3235–0288) is used by a foreign private issuer both to register a class of securities under the Exchange Act as well as to provide its annual report required under the Exchange Act. Like the Form F–1, Form 20–F also requires the filing of numerous exhibits.

Form 6–K (OMB Control No. 3235–0116) is used by a foreign private issuer to report material information that it:

- Makes or is required to make public under the laws of the jurisdiction of its incorporation, domicile or organization (its ''home country'');
- Files or is required to file with its home country stock exchange that is made public by that exchange; or
- Distributes or is required to distribute to its security holders.

A foreign private issuer may attach annual reports to security holders, statutory reports, press releases and other documents as exhibits or attachments to the Form 6–K.

As a result of the adopted English summary provision described above, the reporting and cost burden estimates for Forms F–1 and 20–F have changed. Accordingly, we have revised the estimated information collection requirements that we initially submitted to the OMB. Regarding Form F–1, we have decreased by 39 hours our estimate of the total annual burden incurred by registrants in the preparation of a Form F–1 to 65,880 hours (from the previously estimated 65,919 hours). We also have decreased by $3435 the total annual costs attributed to the preparation of a Form F–1 by outside firms to $34,567,031 (from the previously estimated $34,570,466).

We have derived these estimates from the following revised assumptions. First, we have decreased by two our estimate of the number of registrants (five from the previously estimated seven) that will incur additional burden hours and costs for services pertaining to translating into English either all or some of a foreign language document for submission as either an English translation or English summary exhibit instead of an English ''version'' or ''brief description.'' Second, we have decreased by 12 our estimate of the number of additional burden hours (36 hours from the previously estimated 48 hours) that each of the five registrants will incur when preparing English translations or English summaries in accordance with the adopted amendments (for a total of 180 additional burden hours instead of the 336 hours previously estimated). We continue to expect that registrants will incur 25% of these additional burden hours (45 hours instead of the previously estimated 84 hours). Third, we have decreased by 5 the number of additional pages per filing (13 pages compared to the previously estimated 18 pages) that each registrant must translate at a cost of $75 per page. We continue to expect that outside firms will account for 75% of the translation costs resulting in $3656 of costs attributable to outside firms (rather than the previously estimated $7,091).

Regarding Form 20–F, we have decreased by 174 hours the total annual burden incurred by foreign private issuers in the preparation of a Form 20–F to 501,763 hours (from the previously estimated 501,937 hours). We further have decreased by $16,341 the total annual costs attributed to the preparation of the Form 20–F by outside firms to $263,194,113 (from the previously estimated $263,210,454).

We have derived these estimates from the following revised assumptions. First, while our estimate of the number (58) of foreign private issuers affected by the amendments remains the same, we have decreased by 12 our estimate of the number of additional burden hours (36 hours from the previously estimated 48 hours) that each of the affected issuers will incur when preparing English translations or English summaries in accordance with the adopted amendments (for a total of 2088 additional burden hours instead of the 2784 hours previously estimated). We continue to expect that foreign private issuers will incur 25% of these additional burden hours (522 hours instead of the previously estimated 696 hours). Second, we have decreased by five the number of additional pages per filing (13 pages compared to the previously estimated 18 pages) that each issuer must translate at a cost of $75 per

[154] 44 U.S.C. 3501 *et seq.*

[155] Publication and submission were in accordance with 44 U.S.C. § 3507(d) and 5 CFR 1320.11.

[156] The adopted amendments still eliminate the ''English version'' option under Securities Act Rule 403(c) and Exchange Act Rule 12b–12(d), as proposed. They also still eliminate the ''brief description'' option in General Instruction D to Form 6–K, as proposed.

[157] 17 CFR 239.63, 239.62, 239.64 and 239.65. These forms are also promulgated as Exchange Act forms under 17 CFR 249.446, 249.444, 249.445, and 249.447.

[158] 17 CFR 239.31.

[159] 17 CFR 249.220f.

[160] See Proposing Release, Part V for a description of and the burden estimates for Forms ID, ET, SE and TH.

page. We continue to expect that outside firms will account for 75% of the translation costs resulting in $42,413 of costs attributable to outside firms (rather than the previously estimated $58,754).

Regarding Form 6–K, we estimate that the amendments will cause an increase of 2477 burden hours resulting in a total of 25,477 hours (from the previous 23,000 hours). We further estimate that the adopted amendments will cause foreign private issuers to incur an aggregate increase of $165,150 in translation costs when preparing an English translation or summary exhibit for a Form 6–K, resulting in total costs of $12,240,150 (compared to the previous $12,075,000).

We have based our Form 6–K estimates on the following assumptions. First, we have increased the number of Form 6–K responses by 3161 to 14,661 (from the previous 11,500).[161] Second, we estimate that 367 of the total number of Form 6–Ks filed or submitted would incur additional English translation expenses as a result of the amendments. Third, we estimate that for each of the affected Form 6–K filings or submissions, there will occur an additional 27 burden hours. We continue to expect that issuers will incur 25% of these additional burden hours, resulting in 2477 additional burden hours for the Form 6–K respondents. Finally, we expect that each affected issuer will have to translate an additional 8 pages at a cost of $75 per page. We continue to expect outside firms to incur 75% of these English translation costs, resulting in an additional $165,150 of costs attributable to outside firms.

We are soliciting comment on the expected Paperwork Reduction Act effects of the adopted amendments. In particular, we solicit comment on the accuracy of our additional burden hour and cost estimates expected to result from the adopted amendments. We further request comment on whether the expected effects of the amendments discussed in this section are necessary for the proper performance of the Commission's functions, including whether the additional information garnered will have practical utility. In addition, we solicit comment on whether there are ways to enhance the quality, utility, and clarity of the information to be collected. We further solicit comment on whether there are ways to minimize the burden of information collection on those foreign filers who will file the above forms, including through the use of automated collection techniques or other forms of information technology. Finally, we solicit comment on whether the amendments will have any effects on any other collection of information not previously identified in this section.

If you would like to submit comments on the collection of information requirements and expected effects, please direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503. You should also send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, with reference to File No. S7–18–01. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–18–01, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street NW, Washington, DC 20549. OMB must make a decision concerning the affected collections of information between 30 and 60 days after publication of this release. Consequently, in order to ensure that your comments achieve their fullest effect, you should submit comments to OMB within 30 days of this release's publication.

IV. Cost-Benefit Analysis

A. Background

In the Proposing Release, we stated our expectation that the proposal would achieve the same benefits for investors, foreign issuers and others realized when we adopted the mandated EDGAR filing system for domestic filers in 1993. We further noted that we excluded foreign filers from mandated EDGAR filing in 1993 because we believed that they would incur higher costs from the implementation of EDGAR than those faced by domestic filers. As we explained, since then significant technological advances have occurred that, together with the recent modernization of EDGAR, should reduce EDGAR costs for foreign filers. Because of these developments, we believe that it is now appropriate to include foreign filers in our mandated EDGAR system.[162]

We solicited comment on the expected benefits and costs and on any others that could result from adoption of EDGAR filing requirements for foreign issuers. We also requested data to quantify the costs and value of the benefits identified.[163] We received 19 comment letters that expressed general approval of the proposed amendments because of the benefits expected to result from them. Several of these commenters agreed that the expected benefits would be the same as those achieved by mandated EDGAR filing for domestic issuers as described in the Proposing Release. None of these commenters provided data to quantify the value of the benefits identified.

Most of the commenters expressed concern about specific aspects of the proposed amendments because of their expected costs that, according to these commenters, would pose an undue burden on foreign issuers.[164] The aspects that received the most expressions of concern were:

- The proposed elimination of the ''English summary or version'' option that would require both an electronic and paper filer to provide a full English translation of a foreign language document required as an exhibit or other attachment to a filing or submission; and
- The proposed mandated EDGAR submission of all Form 6–K reports other than the Form 6–K submitted to deposit a foreign private issuer's attached annual report to security holders.

Only three of these commenters provided data to quantify the costs identified.[165] All of the data provided concerned the expected costs that would result from the proposed elimination of the option to provide an English summary or version of a foreign language document. One commenter noted that the elimination of this option would cause a foreign issuer to incur additional English translation costs ranging from $2,250 to $4,375 for each 50 page document, such as a material contract, depending on the level of difficulty of the foreign language required to be translated.[166] Another commenter stated that elimination of the ''English summary'' option would

[161] 14,661 is the number of Form 6–Ks filed in calendar 2001.

[162] Proposing Release, Part III.

[163] Proposing Release, Part III.C.

[164] Of the 26 commenters that expressed such concerns, 14 also noted the benefits that would result from the adoption of the proposal.

[165] *Comment Summary* at Part III.B.3.

[166] This commenter further stated that, for each foreign language document required to be translated because of the proposed amendments, a foreign issuer would have to pay a bilingual attorney to proofread the translated document since professional translators generally lack the legal or technical expertise to understand much of the text that they are asked to translate. Although we believe that many foreign companies rely on in-house counsel to perform at least some of this review, according to this commenter, the cost of this legal layer of review would exceed the cost of the translation services themselves in most cases.

cause it to incur $5,800 to translate each quarterly or annual report to security holders and an additional $100,000 to translate a foreign offering circular. One other commenter stated that it would incur approximately $200,000 and take two to three months to obtain English translations of Japanese language statutory reports and other documents that it currently does not translate.

In response to these comments, we have reconsidered and revised the aspects of our rule proposal that have generated the most concern. In particular, we have:

- Amended both the electronic and paper filing rules to permit the use of an English summary for some foreign language documents instead of requiring an English translation for all foreign language documents; [167]
- Eliminated the written certification requirement regarding the fairness and accuracy of an English translation for both domestic and foreign filers; [168]
- Amended the electronic filing rules to permit either the electronic or paper submission of a foreign issuer's ''statutory'' report under Form 6–K in specified circumstances; [169]
- Amended Form 6–K to permit the submission of an English summary of a statutory report or other foreign language document in specified circumstances in addition to those specified in the electronic and paper filing rules; [170] and
- Amended Form 6–K to clarify that a foreign private issuer is not required to submit under cover of Form 6–K an offering circular or prospectus that pertains solely to a foreign offering, even when an English translation or English summary is available, if the issuer has already submitted a Form 6–K that reported material information disclosed in the offering circular or prospectus.[171]

Several commenters also expressed concern regarding our proposed mandated EDGAR filing of Form CB when either the filer or the subject company of the Form CB transaction is an Exchange Act reporting company. These commenters noted that, because this proposal would require the EDGAR submission of a Form CB by a foreign filer that was not an Exchange Act reporting company if the subject company was an Exchange Act reporting company, it would discourage the use of the Form CB. Because we found merit in these comments, we have revised our rule amendment to require the electronic filing of a Form CB only when the filer is an Exchange Act reporting company, regardless of the reporting status of the subject company.[172]

The above revisions address most of the cost concerns expressed by the commenters. Consequently, while some foreign issuers will incur costs as a result of the adopted amendments, these costs will be less than those that would have resulted under the rule proposal. We further expect that the benefits of the adopted amendments will justify the resulting costs.

B. Benefits

We expect that the adopted amendments will benefit investors, financial analysts and others by increasing the efficiency of retrieving and disseminating information about foreign issuers that file registration statements, periodic reports and other documents with the Commission, to the extent that these documents are not currently available through EDGAR.[173] The mandated electronic transmission of foreign issuers' securities documents will enable investors to access more quickly registration statements, annual and periodic reports and other filings containing detailed information about foreign issuers. Instead of having to come in person or through an agent to the Commission's public reference room [174] to conduct a search for a particular foreign issuer filing that is in paper or microfiche, an investor will be able to find and review a foreign issuer filing on any computer with an Internet connection by accessing the EDGAR system through the Commission's web site or through a third party web site that links to EDGAR. The adopted amendments will also enable financial analysts and others to retrieve, analyze and disseminate more rapidly information about reporting foreign issuers. As a result, not only should an investor be able to form more efficient investment decisions about particular foreign issuers, but foreign issuers should benefit from increased market exposure for their securities in the United States.

Foreign issuers should further benefit from the increased efficiencies in the filing process resulting from the adopted amendments. By electronically transmitting their securities documents directly to the Commission, foreign issuers will avoid the uncertainties and delays that can occur with the manual delivery of paper filings. Foreign issuers also will benefit from no longer having to submit multiple copies of paper documents to the Commission. Foreign issuers will further benefit from the Commission's longer filing hours for the direct electronic transmission of documents, which will enable foreign issuers to file their securities documents directly via EDGAR until 10 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is in effect.

Both foreign issuers and investors should benefit from increased efficiencies in the Commission's storage, retrieval, and analysis of foreign issuer filings, which are expected to result from the adopted amendments. Because the Commission's staff will be able to retrieve and analyze information about foreign filers more readily than under our current paper system, mandated electronic filing for foreign issuers should facilitate both the staff's review of a particular foreign issuer's registration statement or report and its study of issues affecting most foreign filers. For example, the adopted amendments should enable Commission staff to access quickly a foreign registrant's Exchange Act reports that have been incorporated by reference into a Securities Act registration statement that is the subject of review. Because Commission staff must review these incorporated reports when conducting a full review of the Securities Act document, electronic access to all relevant reports should facilitate the timely completion of the review process for a foreign registrant.

The adopted amendments will also enable Commission staff to access rapidly registration statements, reports and related correspondence pertaining to other foreign issuers that are in the same geographic region or industry group as a foreign registrant. This electronic access should foster the development of consistent comments on issues that are common to foreign

[167] New Regulation S–T Rule 306(a), new Securities Act Rule 403(c)(1) and (3), and new Exchange Act Rule 12b–12(d)(1) and (3).

[168] Ten commenters specifically objected to this written certification requirement, which is currently codified at Regulation S–T Rule 306(a).

[169] New Regulation S–T Rule 101(b)(7). The specified circumstances are that the report cannot be a press release, cannot have been or required to be circulated to the foreign private issuer's security holders, and, if discussing a material event, must have already been the subject of a Form 6–K filed on EDGAR.

[170] New paragraph D of the General Instructions to Form 6–K. The specified circumstances are that the report cannot be a press release and cannot have been or required to be circulated to the foreign private issuer's security holders. At the request of commenters, we have further amended Form 6–K to clarify that a statutory report that discloses only unconsolidated financial information of a parent company may be the subject of an English summary.

[171] New paragraph D of the General Instructions to Form 6–K.

[172] New Regulation S–T Rule 101(a)(1)(vi).

[173] Approximately 20% of Exchange Act reporting foreign issuers voluntarily filed their securities documents on EDGAR in calendar 2001.

[174] The Commission's public reference room is located in its Washington, D.C. headquarters.

registrants. This should result in better disclosure to the benefit of foreign issuers and the investing public alike.

Investors and members of the financial community will also benefit from the adopted amendments' requirement that foreign issuers provide full English translations of specified documents because of their importance in understanding the business and financial condition of, and corporate governance matters pertaining to, an issuer. Investors and others will also benefit from the adopted amendments' requirement that a foreign issuer disclose under cover of a Form 6–K new material information mentioned also in a statutory report, foreign offering circular, or other foreign language document before it may submit an English summary of the statutory report or offering circular. This requirement will serve to ensure the prompt dissemination of all material information about a foreign issuer in U.S. capital markets.

We are aware that many foreign issuers already post their financial statements in electronic format on their web sites. Nevertheless, we believe that mandated EDGAR filing for foreign issuers is beneficial to investors for the following reasons.

- Mandated EDGAR filing for foreign issuers will result in the Commission's creation of a central electronic repository for foreign filings that is free to anyone that has access to a computer linked to the Internet.
- Some foreign issuers have only posted on their web sites financial statements that meet their home country requirements and not the Commission's requirements.
- Many foreign issuers have electronically formatted their financial statements only in PDF for viewing on their web sites. PDF's search capabilities are not as extensive as those provided by the version of HTML that EDGAR filers may use to format electronically their documents.[175] Moreover, since HTML is a dominant language of the Internet, Commission staff will be able to upgrade EDGAR data formatting requirements to keep current with Internet standards and to take advantage of improvements in Internet data formats.

C. Costs

We expect that the adopted amendments will result in some costs to foreign issuers. However, for the following reasons, we also expect that only a minority of foreign issuers will bear the full range of costs resulting from adoption of the amendments.

The expected costs consist of both initial and ongoing costs. Initial costs are those associated with the purchase of compatible computer equipment and software, including EDGAR software if obtained from a third-party vendor and not from the Commission's web site.[176] Initial costs also include those resulting from the training of existing employees to be EDGAR proficient or the hiring of additional employees or agents that are already skilled in EDGAR processing. Initial costs further include those associated with the formatting and transmission of a foreign issuer's first document filed on EDGAR. These transmission costs may include those related to subscribing to an Internet service provider.

Ongoing costs are those associated with the electronic formatting and transmission of subsequent EDGAR filings, including amendments to a foreign issuer's initial EDGAR filing. An issuer may also incur future costs resulting from the training or hiring of employees regarding updated EDGAR filing requirements.

The magnitude of these costs for a foreign issuer will depend on its level of technological proficiency and its previous familiarity with EDGAR filing requirements.

For example, of the 1,310 foreign private issuers that were Exchange Act reporting companies as of December 31, 2000,[177] 244 (approximately 19%) not only did not voluntarily file on EDGAR, but also did not electronically present their financial statements on their web sites or otherwise for public use. Similarly, of the 161 foreign private issuers that became Exchange Act reporting companies during calendar year 2001, 36 (approximately 22%) lacked an informational web site in addition to not filing on EDGAR. These foreign private issuers will incur the full range of initial and other costs associated with electronic filing. Some may have to purchase compatible computer equipment. Some may also have to upgrade their operating and word processing software in addition to obtaining the EDGARLink software. They all will have to hire information technology employees or agents that are knowledgeable about the EDGAR process. Then they will incur the costs associated with formatting and transmitting their documents on EDGAR, which may include the cost of subscribing to an Internet service provider.

A much larger segment of Exchange Act reporting foreign private issuers already currently electronically format their financial statements in some fashion for public use. Of the total number of Exchange Act reporting companies as of December 31, 2000, 1,066 (approximately 81%) had electronically formatted their financial statements and other material information either for posting on their web site or to meet the requirements of their sovereign securities commission.[178] Similarly, of the 161 foreign private issuers that became Exchange Act reporting companies in calendar year 2001, 125 (approximately 78%) had electronically formatted their financial statements and other material information for public consumption.[179]

These foreign issuers have already incurred initial costs associated with the preparation of disclosure materials in an electronic format. They have already trained their employees or hired an in-house information technology team or a third party agent, such as an Internet services company or financial printer, to format electronically their financial statements and other documents of interest to investors. After obtaining the EDGAR software,[180] these persons should be capable of electronically processing reporting foreign issuers' securities documents for the EDGAR system. Consequently, for approximately four-fifths of Exchange Act reporting foreign issuers, the mandated EDGAR requirements should

[175] PDF is based on a proprietary data format for which only a few software programs with search capabilities are commercially available. In contrast, there are a variety of methods, languages and software available for searching a HTML document.

[176] Once a first-time EDGAR filer has filed a Form ID to obtain its EDGAR access codes, it can download for free the EDGARLink software from the Commission's web site. The EDGAR filing manual is also available for downloading at our web site. Filers may also purchase the EDGARLink software and filer manual through the Commission's Public Reference Room and from certain third party vendors. See the *EDGAR Overview* at Section C(1).

[177] See *Reporting Foreign Issuers List.*

[178] This amount includes the 481 Canadian public companies (approximately 37% of reporting foreign private issuers as of December 31, 2000) that are required by the Canadian Securities Administrators to file their securities documents electronically on Canada's System for Electronic Document Analysis and Retrieval (''SEDAR''). This amount further includes 585 non-Canadian foreign private issuers (approximately 45% of reporting foreign private issuers as of calendar year 2000 year end) that have chosen to post on their web sites their most recent and historical financial statements either as part of their annual or periodic reports or standing alone. The 80% figure also includes the foreign private issuers that were Exchange Act reporting companies as of December 31, 2000 and had filed their securities documents on EDGAR.

[179] Approximately 56% of the 125 reporting foreign issuers were Canadian.

[180] As previously mentioned, since the EDGARLink software is now available on the Commission's web site, for most new EDGAR filers, the cost of obtaining the EDGAR software will be insignificant.

result only in costs related primarily to the electronic formatting of their securities documents in a format compatible with EDGAR and transmission of the EDGAR formatted documents to the Commission.

Currently EDGAR only accepts documents formatted in HTML 3.2 or in ASCII. Many Exchange Act reporting foreign issuers have formatted their financial statements only in PDF for presentation on their web sites or for submission to foreign securities commissions.[181] These foreign issuers may incur both initial and ongoing costs associated with presenting their financial statements in an EDGAR-compatible format.

However, other reporting foreign issuers have presented their financial statements in some version of HTML on their web sites. These foreign issuers have already trained employees or an agent familiar with formatting in HTML. This previous familiarity with HTML should help to reduce the initial EDGAR costs for these reporting foreign private issuers.[182] This previous expertise in HTML may also help to lessen the ongoing costs related to updated EDGAR training that incorporates improvements in HTML.

Moreover, since HTML is a dominant language used to present information on Internet web sites, reporting foreign issuers that have formatted their financial statements thus far only in PDF may already have trained employees or an agent familiar with formatting in HTML. If so, these foreign issuers should also face reduced initial and ongoing EDGAR costs.[183]

During the calendar year ended December 31, 2000, 232 (approximately 18%) of reporting foreign private issuers voluntarily chose to file their annual reports, registration statements and other securities documents on EDGAR. This segment of voluntary EDGAR filers increased to 269 (approximately 20%) during the calendar year ended December 31, 2001.[184] For these reporting foreign private issuers, the adopted amendments should result in no initial costs and little or no ongoing costs in addition to those that the foreign issuer had already decided to expend.

For the minority of foreign issuers that have not yet electronically presented their financial statements for public use,[185] as well as for other foreign issuers affected by the adopted amendments, we expect that technological advances regarding the Internet and recent modernization of the EDGAR system will help reduce the initial and ongoing costs resulting from mandated EDGAR filing for foreign issuers. For example, today foreign issuers are able to transmit directly their securities documents to the Commission through the Internet with the assistance of an Internet services provider. A foreign issuer should find that this method is less expensive than using a direct dial modem to connect to the EDGAR system with the resultant long distance charges.

Today there also are numerous financial printers and other information technology specialists that are capable of electronic document processing, including for the EDGAR system, and available on an international basis.[186] No longer must a foreign issuer rely on a filing agent located in a major city in the United States for its EDGAR needs. This closer proximity of EDGAR knowledgeable agents should reduce the travel, long distance and other initial and ongoing costs shouldered by reporting foreign issuers when preparing their documents for the EDGAR system.

The adopted amendments require that both electronic and paper filers obtain full English translations for specified foreign language documents while permitting the submission of English summaries for other documents. We do not expect these provisions to increase materially the costs of document preparation and filing for foreign issuers and other affected persons, since the adopted amendments largely codify existing Commission practice regarding the treatment of foreign language documents. Moreover, in response to commenters' concerns, we have adopted amendments that permit the submission of an English summary instead of a full English translation of a statutory report or other foreign language document in specified circumstances. We also have adopted amendments that permit the filing of a statutory report in paper and eliminate the need to submit a foreign offering circular in specified circumstances. These amendments should prevent the incurrence of excessive costs that many commenters feared would result from the proposed requirement to provide a full English translation of all foreign language documents.

Nevertheless, some foreign issuers may incur costs from our requirement to provide an English translation instead of an English summary of some of the specified documents. Some foreign issuers may also incur costs from our elimination of the option to file a ''version'' or ''brief description'' of a foreign language document instead of an English summary or translation for both electronic and paper filings.[187] Because there has been only limited use of the summary, version or brief description option, we do not expect the above amendments to affect many filers.[188] Moreover, many agents, including some with EDGAR expertise, provide translation services. The globalization of these agents in recent years should serve to lessen the costs of obtaining their translation services.[189]

The amendments will cause some domestic persons to file on EDGAR their Schedule TOs, Form CBs and Schedule 13D/Gs in connection with tender offers, exchange offers and other transactions involving the securities of foreign private issuers. However, we expect the number of affected domestic persons to be small. During calendar years 2000 and 2001, out of a total number of 245 and 599 Schedule TOs filed, respectively, with the Commission, only 11 (approximately 4%) and 15 (approximately 2.5%) were filed in paper. Of these 11 and 15 paper Schedule TOs filed, respectively, in 2000 and 2001, none and only three (approximately 0.5% out of the total filed) were filed by domestic entities.

Similarly, for calendar years 2000 and 2001, out of a total of 13,282 and 12,439 Schedule 13Ds and 13Gs filed, only 279 (approximately 2%) and 284 (approximately 2%) were filed in paper. Of these Schedule 13D/G paper filings, only 7 (approximately .1% of the total

[181] For example, the Canadian Securities Administrators require that Canadian public companies file their securities documents in PDF on SEDAR. See Canada's National Instrument 13–101 (September 7, 1999).

[182] Even if foreign issuers are unfamiliar with HTML, there are many software packages available that will translate their documents into ASCII or HTML.

[183] Furthermore, since under Regulation S–T Rule 104 [17 CFR 232.104], we allow EDGAR filers to file a PDF version of a document as an unofficial copy, foreign issuers that present their financial statements in PDF for non-EDGAR purposes will not incur additional formatting costs when exercising the option to file an unofficial PDF version on EDGAR.

[184] The total number of foreign private issuers that were Exchange Act reporting companies as of December 31, 2001 was 1344.

[185] This minority would include foreign individuals who only file Schedules 13D or 13G.

[186] The web sites of each of three large financial printers reveal that, either directly or through affiliates, these financial printers maintain offices in 20–40 different countries.

[187] The brief description option appears in the current version of General Instruction D to Form 6–K.

[188] During calendar years 2000 and 2001, out of 940 filings by non-English speaking, reporting foreign issuers examined, depending on the type of filing, only 2%–5% used the English summary, version or brief description option.

[189] For example, the web sites of the three large financial printers referred to in the preceding footnote advertise their translation services as an integral part of their businesses.

filed) and 9 (approximately .1% of the total filed) were filed by domestic companies and pertained to the securities of foreign issuers.[190]

Furthermore, during calendar years 2000 and 2001, of the 95 and 32 Form CBs filed with the Commission, 32 (approximately 34%) and 13 (approximately 41%) were filed by Exchange Act reporting companies. Only four (4%) and five (16%) out of the total number of Form CBs filed, respectively, in calendar years 2000 and 2001 were filed by domestic Exchange Act reporting companies.

Some domestic persons may incur costs resulting from the electronic formatting of their securities documents as a result of the amendments. Since domestic persons are already subject to mandated EDGAR filing, they already have trained employees or agents capable of readily electronically formatting their Form TOs, Form CBs or Schedule 13D/Gs for the EDGAR system. This previous familiarity with EDGAR should reduce the costs incurred by these domestic persons as a result of the adopted amendments.

Based on the foregoing, and as further explained below, we expect that the amendments will result in total costs for foreign issuers of between $8,037,005 to $23,070,333. We have derived this range of costs based on the following assumptions and estimates.

First, we expect that the amendments will affect 81% of foreign private issuers filing Exchange Act reports because these foreign private issuers have not already voluntarily filed their reports on EDGAR. Conversely, for the 19% of reporting foreign private issuers that already are EDGAR filers, the amendments should result in no additional costs.[191]

Second, we expect that all of the 81% of affected reporting foreign private issuers will incur costs associated with the electronic formatting and electronic transmission of their Exchange Act reports. We also expect that many of these foreign private issuers will also incur similar costs regarding the electronic formatting and filing of their Securities Act documents.

Third, we expect that, for 62% of reporting foreign private issuers (or 77% of those affected), the amendments will result primarily in electronic formatting and filing costs. This segment already has achieved technical proficiency based on their past experience electronically formatting their financial and other documents for presentation on their web sites or to meet the requirements of their sovereign securities commissions.[192]

Fourth, for the remaining 19% of reporting foreign private issuers (or 23% of those affected) that have little to no computer, Internet or related technical experience, if they choose to outsource to a financial printer or other filing agent all of the work associated with producing an EDGAR compatible document, we do not expect any significant costs to result other than the electronic formatting and filing costs.[193] However, if these foreign private issuers attempt to perform much of the EDGAR preparation, filing, and related tasks themselves, the amendments may result in the incurrence of additional, significant costs associated with the purchase or upgrading of computer hardware and software, the subscribing to an Internet service provider, and the hiring of at least one technically proficient employee.

Fifth, we expect that all of the foreign governments that have Exchange Act reporting obligations will incur electronic formatting and filing costs.

Sixth, we expect the cost of electronic formatting for all of the affected foreign issuers to be $15 a page regardless of the particular filing. We also expect a filing agent to charge an electronic filing fee of $150 per filing.[194]

Seventh, we expect that the elimination of the ''English version and brief description'' option and adoption of a limited English summary option will result in additional costs to between 2–5% of foreign private issuers when filing their Form 20–Fs, Form 6–Ks, and Form F–1s, depending on the particular form.[195]

Based on these assumptions, we expect the amendments to result in the following costs for the following forms:[196]

FORM 20–F ANNUAL REPORTS

81% of 1327 foreign private issuers[197] = 1075	
240 pages (including exhibits)[198] × $15 per page × 1075 =	$3,870,000
$150 (filing fee) × 1075 =	+161,250
	4,031,250

[190] We also expect that the amendments will not have a significant impact on affected domestic entities. According to two large financial printers, the average cost of electronically formatting and transmitting a Schedule 13D or 13G on EDGAR is $250.

[191] These figures are based on the averages of the percentages of foreign private issuers filing on EDGAR in calendar years 2000 and 2001.

[192] This segment increases to 81% of foreign private issuers when including those reporting foreign private issuers that already file their securities documents on EDGAR.

[193] According to a representative of a large financial printer, most companies elect to hire a filing agent to perform most or all of the work required to produce a Securities Act or Exchange Act document, including typesetting the initial document, EDGAR formatting and filing, and related tasks such as printing and document distribution. For these companies, the cost of preparing a document for EDGAR filing is included in the amount charged for EDGAR formatting.

[194] According to a representative of a large financial printer, $15 per page is the typical rate charged for most companies. These companies have elected to hire the filing agent to perform most of the document production tasks, including EDGAR formatting. This representative further stated that $150 was the typical EDGAR filing fee charged for most types of Securities Act and Exchange Act documents.

[195] Based on an examination of 940 documents filed by non-English speaking issuers in 2000 and 2001, 5.0% of Form 20–F filers, 3.5% of Form F–1 filers, and 2.5% of Form 6–K filers used the ''English summary, version or brief description'' option.

[196] We expect these forms to generate most of the EDGAR costs for foreign issuers. We have not included Schedules TO, 13D and 13G in this list because, as discussed above, based on the small percentage of these documents filed in paper in calendar years 2000 and 2001, we expect the costs incurred in electronically formatting and filing these documents to be relatively insignificant. We also have not included Form CB in this list since a majority of the Form CBs filed in 2000 and 2001 were by non-Exchange Act reporting companies, which are not subject to mandated EDGAR filing. Similarly, we have not quantified the EDGAR costs that domestic issuers are expected to incur as a result of the amendments due to the insignificant number of domestic filings expected to be affected.

[197] 1327 is the average of the number of reporting foreign private issuers in calendar years 2000 and 2001.

[198] This estimate of the average number of pages of a Form 20–F annual report, as well as the average page estimates of Forms 6–K, F–1, F–2, F–3, F–4, Schedule B, and Form 18–K, are based on an examination of actual filings.

FORM 6–K REPORTS

1075 foreign private issuers × 10 Form 6–Ks per issuer = 10,750 Form 6–Ks.	
10,750 × 10 pages per Form 6–K × $15 =	$1,612,500
Filing fees =	+161,250
	1,773,750

FORM F–1

71% × 96 filings [199] = 68 filings affected	
450 pages (including exhibits) per filing × $15 × 68 =	$459,000
Filing fees =	+10,200
	469,200

[199] 96 is the average of the number of Form F–1s filed in 2000 and 2001. 71% of these Form F–1s were paper filings.

FORM F–2

71% × 4 filings [200] = 3 filings affected	
125 pages (including exhibits) per filing × 3 × $15 =	$5,625
Filing fees =	+450
	6,075

[200] Four is the average of the number of Form F–2s filed in 2000 and 2001. 71% of these Form F–1s were paper filings.

FORM F–3

77% × 158 filings [201] = 122 filings affected	
70 pages (including exhibits) per filing × 122 × $15 =	$128,100
Filing fees =	+18,300
	146,400

[201] 158 is the average of the Form F–3s filed in 2000 and 2001. 77% of these Form F–3s were paper filings.

FORM F–4

78% × 238 filings [202] = 186 filings affected	
375 pages (including exhibits) per filing × 186 × $15 =	$1,046,250
Filing fees =	+27,900
	1,074,150

[202] 238 is the average of the Form F–4s filed in 2000 and 2001. 78% of these Form F–4s were paper filings.

SCHEDULE B

28 foreign governments × 150 pages (including exhibits) per filing × $15 =	$63,000
Filing fees =	+4,200
	67,200

FORM 18–K

24 filings × 500 pages (including exhibits) per filing × $15 =	$180,000
Filing fees =	+3,600
	183,600
Total above electronic formatting and filing costs =	7,751,625

We also expect the elimination of the ''English version or brief description'' option and the adoption of a limited English summary option to result in the following additional translation costs for a small percentage of foreign private issuers when filing their Form 20Fs, Form 6Ks, and Form F–1s:

FORM 20–F

13 additional pages to be translated per filing × $76 per page [203] =	$988 per filing

FORM 20–F—Continued

58 affected filings × $988 =	57,304

[203] The rate of $76 per page assumes that an outside firm performs 75% of the English translation work at a rate of $75 per page. The $75 per page rate is an average of English translation rates for different foreign language documents that attorneys representing foreign clients have stated are typical. The $76 per page rate also assumes that a company's in-house counsel performs 25% of the English translation work at a rate of $80 per hour. The $80 per hour rate derives from a median salary of $106,500 for a company associate or assistant general counsel in the New York City metropolitan area, according to the *Report On Management & Professional Earnings in the Securities Industry*, published by the SIA, October 2001. We have multiplied $106,500 by 1.35 to derive the annual cost to a company of employing an associate or assistant general counsel. We then have divided this annual cost ($143,775) by 1800 to derive a per hour cost of $80. Finally, we have added .75 × $75 and .25 × $80 to derive a blended rate of $76 per page.

FORM 6–K

8 additional pages to be translated per filing × $76 per page = $608 367 affected filings × $608 =	$223,136

FORM F–1

13 additional pages to be translated per filing × $76 per page = $988 5 affected filings × $988 =	$4,940
Total above additional ''English translation'' costs =	285,380

Based on the foregoing, we expect the amendments to result in approximately $8,037,005 of costs for most reporting foreign issuers.[204] However, 19% of reporting foreign private issuers expected to be affected by the amendments may incur additional costs because of their lack of technical proficiency. If these foreign private issuers outsource most or all of the work required to prepare a document for EDGAR formatting to a financial printer or other filing agent, we expect that little to no additional costs will result.[205]

However, many of these foreign private issuers may decide to perform some or all of the work required for preparing a document for EDGAR formatting and filing. These filers may also eventually choose to perform some of the tasks related to document printing and distribution. If so, they may incur significant additional charges associated with purchasing or upgrading computer hardware and software, subscribing to an Internet service provider, and hiring at least one technically proficient employee to assist in word processing, Internet, and EDGAR preparation tasks, as follows:

244 affected foreign private issuers × $1,000 to purchase or upgrade a computer system[206] =	$244,000
244 × $240[207] to subscribe to an Internet service provider per year =	58,560
244 × $60,372[208] the annual cost of employing a computer operator =	14,730,768
	15,033,328

[206] The $1,000 cost is based on suggested prices for basic computer systems stated in computer publications.

[207] The $240 rate derives from a monthly rate of $20 for one year, which is typical of the subscription fees quoted for Internet service providers in computer publications.

[208] According to the *Report on Office Salaries in the Securities Industry*, published by the SIA, in October 2001, the mean annual salary for a senior computer operator in the New York City metropolitan area is $44,720. We have multiplied this amount by 1.35 to derive the cost to a company of employing a senior computer operator for a year.

We do not expect each of the 244 affected foreign private issuers to incur all of the above additional costs. It is likely that many filers will choose to hire outside firms to handle some or most of the EDGAR preparation, formatting, transmission, and related tasks. Therefore, we expect the total costs of the amendments to be within the range of $8,037,005 [209] to $23,070,333.[210]

V. Promotion of Efficiency, Competition and Capital Formation Analysis

Section 23(a)(2) of the Exchange Act requires the Commission, when adopting rules under the Exchange Act, to consider the anti-competitive effects of any rules it adopts. Furthermore, Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition and capital formation.

In the Proposing Release, we considered the amendments in light of the standards set forth in the above statutory sections. We solicited comment on whether, if adopted, the proposed amendments would result in any anti-competitive effects or promote efficiency, competition and capital formation. We further encouraged commenters to provide empirical data or other facts to support their views on any anti-competitive effects or any burdens on efficiency, competition or capital formation that might result from adoption of the proposed amendments.[211]

While several commenters stated that various aspects of the proposed amendments would result in excessive costs and impose undue burdens on foreign issuers, only one commenter specifically addressed whether the proposed rules would cause anti-competitive effects in the U.S. economy and its capital markets. According to this commenter, the proposed elimination of the English summary option and the proposed mandated EDGAR filing of most Form 6–K reports would result in additional costs for foreign issuers. Given the increased

[204] This figure ($7,751,625 + $285,380) applies to the 81% of reporting foreign private issuers and all of the reporting foreign governments expected to be affected.

[205] See n. 193, above.

[209] This amount assumes that the 19% of foreign private issuers lacking technical proficiency will outsource most or all of the EDGAR preparation, formatting, filing, and related tasks.

[210] This amount assumes that, in addition to the $8,037,005 of costs, the 19% of foreign private issuers lacking technical proficiency will incur the maximum of estimated additional costs of $15,033,328.

[211] We also requested empirical information regarding the potential impact of the proposed amendments on the economy on an annual basis for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996. We received no comment letters that addressed this issue.

competitiveness among global capital markets, these additional costs could cause foreign issuers to avoid obtaining financing and listing in U.S. capital markets. Consequently, participants in the U.S. financial community and U.S. investors would respectively lose financing and investment opportunities in these foreign companies.

In response to this concern and others raised by commenters, we have revised the proposed rules to permit the use of an English summary for specified foreign language documents and the paper submission of a statutory report under cover of a Form 6–K in specified circumstances. Because of these changes, among others, the adopted amendments should not result in excessive costs or undue burdens on foreign issuers or cause them to avoid U.S. capital markets.

The adopted amendments will enable investors and other interested parties to have the same access to financial and other material information about foreign issuers that have registered securities with the Commission as they currently enjoy with domestic reporting companies. By facilitating the more efficient transmission, retrieval, analysis and dissemination of information contained in foreign issuers' and related third party securities filings with the Commission, the adopted amendments will enhance an investor's ability to make an informed investment decision about a foreign issuer's securities. They also should increase the market access of a reporting foreign issuer's securities in the United States.

In addition, the adopted amendments will subject foreign issuers to the same or substantially similar electronic filing costs shouldered by domestic issuers, thereby placing foreign issuers on a more equal footing, and encouraging competition with domestic issuers. We recognize that the adopted amendments may disparately impact some foreign issuers depending on their level of technological proficiency.

VI. Regulatory Flexibility Act Certification

Under Section 605(b) of the Regulatory Flexibility Act,[212] our Chairman certified that, when adopted, the proposed amendments would not have a significant economic impact on a substantial number of small entities. We attached this certification as Appendix A to the Proposing Release. While we encouraged written comments regarding this certification, none of the commenters responded to this request. Since the changes made to the proposed amendments will reduce the costs of the amendments for foreign issuers, the adopted amendments should lessen any economic impact on small entities.

VII. Statutory Basis and Text of Rule Amendments

We are adopting Securities Act Rule 493b and the amendments to Securities Act Rule 403, the rescission of Regulation S–T Rule 601, the amendments to Regulation S–T Rules 100, 101, 303, 306 and 311, the amendments to Exchange Act Rule 12b–12, and the amendments to the Securities Act and Exchange Act forms, under the authority in Sections 6, 7, 10 and 19(a) of the Securities Act,[213] and Sections 3, 12, 13, 14, 15(d), 23(a) and 35A of the Exchange Act.[214] We are further adopting the amendment to Form F–X under Sections 304, 305, 307, 310 and 319 of the Trust Indenture Act.[215]

List of Subjects in 17 CFR Parts 230, 232, 239, 240, 249, and 269

Reporting and recordkeeping requirements, Securities.

Text of Rule Amendments

In accordance with the foregoing, we are amending Title 17, Chapter II of the Code of Federal Regulations as follows.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 77z–3, 78c, 78d, 78l, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Amend § 230.403 by removing the authority citation following § 230.403 and by revising paragraph (c) to read as follows:

§ 230.403 Requirements as to paper, printing, language and pagination.

* * * * *

(c)(1) All Securities Act filings and submissions must be in the English language, except as otherwise provided by this section. If a registration statement or other filing requires the inclusion of a document that is in a foreign language, the filer must submit instead a fair and accurate English translation of the entire foreign language document, except as provided by paragraph (c)(3) of this section.

(2) If a registration statement or other filing or submission subject to review by the Division of Corporation Finance requires the inclusion of a foreign language document as an exhibit or attachment, the filer must submit a fair and accurate English translation of the foreign language document if consisting of any of the following, or an amendment of any of the following:

(i) Articles of incorporation, memoranda of association, bylaws, and other comparable documents, whether original or restated;

(ii) Instruments defining the rights of security holders, including indentures qualified or to be qualified under the Trust Indenture Act of 1939;

(iii) Voting agreements, including voting trust agreements;

(iv) Contracts to which directors, officers, promoters, voting trustees or security holders named in a registration statement are parties;

(v) Contracts upon which a filer's business is substantially dependent;

(vi) Audited annual and interim consolidated financial information; and

(vii) Any document that is or will be the subject of a confidential treatment request under § 230.406 or § 240.24b–2 of this chapter.

(3)(i) A filer may submit an English summary instead of an English translation of a foreign language document as an exhibit or attachment to a filing subject to review by the Division of Corporation Finance as long as:

(A) The foreign language document does not consist of any of the subject matter enumerated in paragraph (c)(2) of this section; or

(B) The applicable form permits the use of an English summary.

(ii) Any English summary submitted under paragraph (c)(3) of this section must:

(A) Fairly and accurately summarize the terms of each material provision of the foreign language document; and

(B) Fairly and accurately describe the terms that have been omitted or abridged.

(4) When submitting an English summary or English translation of a foreign language document under this section, a filer must identify the submission as either an English summary or English translation. A filer may submit a copy of the unabridged foreign language document when including an English summary or English translation of a foreign language document in a filing. A filer must provide a copy of any foreign language document upon the request of Commission staff.

[212] 5 U.S.C. 605(b).

[213] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[214] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o(d), 78w, and 78*ll*.

[215] 15 U.S.C. 77ddd, 77eee, 77ggg, 77jjj and 77sss.

(5) A Canadian issuer may file an exhibit or other part of a registration statement on Form F–7, F–8, F–9, F–10, or F–80 (§§ 239.37, 239.38, 239.39, 239.40, or 239.41 of this chapter), that contains text in both French and English if the issuer included the French text to comply with the requirements of the Canadian securities administrator or other Canadian authority and, for an electronic filing, if the filing is an HTML document, as defined in Regulation S-T Rule 11(§ 232.11).

* * * * *

3. Section 230.493 is revised to read as follows:

§ 230.493 Additional Schedule B disclosure and filing requirements.

(a) The copy of the opinion or opinions of counsel required by paragraph (14) of Schedule B shall be filed either as a part of the registration statement as originally filed, or as an amendment to the registration statement.

(b) A foreign government or political subdivision of a foreign government must file a registration statement submitted under Schedule B of the Act on the Commission's Electronic Data Gathering and Retrieval System (EDGAR) unless it has obtained a hardship exemption under § 232.201 or § 232.202 of this chapter (Regulation S–T).

(c) A foreign government or political subdivision must disclose in its Schedule B registration statement:

(1) That the Commission maintains an Internet site that contains reports and other information regarding issuers that file electronically with the Commission; and

(2) The address for the Commission Internet site (http://www.sec.gov). A foreign government or political subdivision filing on EDGAR is further encouraged to give its Internet address, if available.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

4. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

5. Amend § 232.100 by revising paragraphs (a) and (c) to read as follows:

§ 232.100 Persons and entities subject to mandated electronic filing.

* * * * *

(a) Registrants whose filings are subject to review by the Division of Corporation Finance;

* * * * *

(c) Any party (including natural persons) that files a document jointly with, or as a third party filer with respect to, a registrant that is subject to mandated electronic filing requirements.

6. Amend § 232.101:

a. By designating the Note to paragraph (a)(1)(iii) as Note 1. and adding Note 2.;

b. By removing the word ''and'' at the end of paragraph (a)(1)(iv);

c. By removing the period at the end of paragraph (a)(1)(v) and in its place adding a semicolon;

d. By adding paragraphs (a)(1)(vi), (a)(1)(vii) and (a)(1)(viii);

e. By revising paragraphs (b)(1) and (b)(6);

f. By adding paragraphs (b)(7), (b)(8), (b)(9), and (b)(10);

g. By removing the period at the end of each of paragraphs (c)(5), (c)(6), and (c)(14) and in its place adding a semicolon;

h. By revising paragraph (c)(9);

i. By removing paragraph (c)(15);

j. By redesignating paragraphs (c)(16) and (c)(17) as paragraphs (c)(15) and (c)(16);

k. By adding the word ''and'' at the end of newly redesignated paragraph (c)(15);

l. By removing the semicolon and the word ''and'' at the end of newly redesignated paragraph (c)(16) and adding a period in its place; and

m. By removing paragraph (d).

The additions and revisions read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(iii) * * *

Notes to Paragraph (a)(1)(iii).

Note 1. * * *

Note 2. Foreign private issuers must file or submit their Form 6-K reports (§ 249.306 of this chapter) in electronic format, except as otherwise permitted by paragraphs (b)(1) and (b)(7) of this section.

* * * * *

(vi) Form CB (§§ 239.800 and 249.480 of this chapter) filed or submitted under § 230.801 or 230.802 of this chapter or § 240.13e–4(h)(8), 240.14d–1(c), or 240.14e–2(d) of this chapter if the party filing or submitting the Form CB is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d));

(vii) Form F–X (§ 239.42 of this chapter) except as otherwise provided by § 232.101(b)(9); and

(viii) Form F–N (§ 239.43 of this chapter) filed by foreign banks and insurance companies and certain of their holding companies and finance subsidiaries under § 230.489 of this chapter.

* * * * *

(b) * * *

(1) Annual reports to security holders furnished for the information of the Commission under § 240.14a–3(c) of this chapter or § 240.14c–3(b) of this chapter, under the requirements of Form 10–K or Form 10–KSB (§§ 249.310 or 249.310b of this chapter) filed by registrants under Exchange Act Section 15(d) (15 U.S.C. 78o(d)), or by foreign private issuers filed on Form 6–K (§ 249.306 of this chapter) under § 240.13a–16 of this chapter or § 240.15d–16 of this chapter;

* * * * *

(6) Periodic reports and reports with respect to distributions of primary obligations filed by:

(i) The International Bank for Reconstruction and Development under Section 15(a) of the Bretton Woods Agreements Act (22 U.S.C. 286k–1(a)) and Part 285 of this chapter;

(ii) The Inter-American Development Bank under Section 11(a) of the Inter-American Development Bank Act (22 U.S.C. 283h(a)) and Part 286 of this chapter;

(iii) The Asian Development Bank under Section 11(a) of the Asian Development Bank Act (22 U.S.C. 285h(a)) and Part 287 of this chapter;

(iv) The African Development Bank under Section 9(a) of the African Development Bank Act (22 U.S.C. 290i–9(a)) and Part 288 of this chapter;

(v) The International Finance Corporation under Section 13(a) of the International Finance Corporation Act (22 U.S.C. 282k(a)) and Part 289 of this chapter; and

(vi) The European Bank for Reconstruction and Development under Section 9(a) of the European Bank for Reconstruction and Development Act (22 U.S.C. 290*l*–7(a)) and Part 290 of this chapter;

(7) A report or other document submitted by a foreign private issuer under cover of Form 6–K (§ 249.306 of this chapter) that the issuer must furnish and make public under the laws of the jurisdiction in which the issuer is incorporated, domiciled or legally organized (the foreign private issuer's ''home country''), or under the rules of the home country exchange on which the issuer's securities are traded, as long

as the report or other document is not a press release, is not required to be and has not been distributed to the issuer's security holders, and, if discussing a material event, has already been the subject of a Form 6–K or other Commission filing or submission on EDGAR;

(8) Form CB (§§ 239.800 and 249.480 of this chapter) if the party filing or submitting the Form CB is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78o(d));

(9) Form F–X (§ 239.42 of this chapter) if:

(i) The party filing or submitting a Form CB (§§ 239.800 and 249.480 of this chapter) is not subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act (15 U.S.C. 78m or 15 U.S.C. 78o(d)); or

(ii) Filed by a Canadian issuer when qualifying an offering statement pursuant to the provisions of Regulation A (§§ 230.251–230.263 of this chapter); and

(10) Form 25 (§ 249.25 of this chapter).

* * * * *

(c)(9) Exchange Act filings submitted to the Division of Market Regulation, except for Form 25 (§ 249.25 of this chapter).

* * * * *

7. Amend § 232.303 by revising paragraph (b) to read as follows:

§ 232.303 Incorporation by reference.

(a) * * *

(b) If a filer incorporates by reference into an electronic filing any portion of an annual or quarterly report to security holders, it must also file the portion of the annual or quarterly report to security holders in electronic format as an exhibit to the filing, as required by Regulation S–K Item 601(b)(13) (§ 229.601(b)(13) of this chapter) and Regulation S–B Item 601(b)(13) (§ 228.601(b)(13) of this chapter). If a foreign private issuer incorporates by reference into an electronic filing any portion of an annual or other report to security holders, or of a Form 6–K report (§ 249.306 of this chapter) filed or submitted in paper, it also must file the incorporated portion in electronic format as an exhibit to the filing. The requirements of this paragraph do not apply to incorporation by reference by an investment company from an annual or quarterly report to security holders.

8. Amend § 232.306:

a. By revising paragraph (a);

b. By removing the Note following paragraph (a);

c. By redesignating paragraph (b) as paragraph (e); and

d. By adding new paragraphs (b), (c), and (d).

The additions and revisions read as follows:

§ 232.306 Foreign language documents and symbols.

(a) All electronic filings and submissions must be in the English language, except as otherwise provided by paragraph (d) of this section. If a filing or submission requires the inclusion of a document that is in a foreign language, a party must submit instead a fair and accurate English translation of the foreign language document in accordance with § 230.403(c) or § 240.12b–12(d) of this chapter, except as otherwise provided by paragraph (c) of this section. Alternatively, if the foreign language document is an exhibit or attachment to a filing or submission subject to review by the Division of Corporation Finance, a party may provide a fair and accurate English summary of the foreign language document if permitted by § 230.403(c)(3) or § 240.12b–12(d)(3) of this chapter.

(b) When including an English summary or English translation of a foreign language document in an electronic filing or submission, a party may also submit a copy of the unabridged foreign language document in paper under cover of Form SE (§§ 239.64, 249.444, 259.603, 269.8, and 274.403 of this chapter) in accordance with § 232.311 of this chapter. A filer must provide a copy of any foreign language document upon the request of Commission staff.

(c) A foreign government or its political subdivision must electronically file a fair and accurate English translation, if available, of its latest annual budget as presented to its legislative body, as Exhibit B to Form 18 (§ 249.218 of this chapter) or Exhibit (c) to Form 18–K (§ 249.318 of this chapter). If no English translation is available, a foreign government or political subdivision must submit a copy of the foreign language version of its latest annual budget in paper under cover of Form SE (§§ 239.64, 249.444, 259.603, 269.8, and 274.403 of this chapter).

(d) A Canadian issuer may file an HTML document, as defined in § 232.11 of this chapter, that contains text in both French and English if the issuer included the French text to comply with the requirements of the Canadian securities administrator or other Canadian authority, and the French text is in an exhibit to or part of:

(1) A registration statement on Form F–7, F–8, F–9, F–10, or F–80 (§§ 239.37, 239.38, 239.39, 239.40, and 239.41 of this chapter);

(2) A registration statement or annual report on Form 40–F (§ 249.240f of this chapter); or

(3) A Schedule 13E–4F (§ 240.13e–102 of this chapter), Schedule 14D–1F (§ 240.14d–102), or Schedule 14D–9F (§ 240.14d–103).

* * * * *

9. Amend § 232.311 by redesignating paragraphs (f), (g) and (h) as paragraphs (h), (i) and (j) and by adding new paragraphs (f) and (g) to read as follows:

§ 232.311 Documents submitted in paper under cover of Form SE.

* * * * *

(f) A party may submit a copy of an unabridged foreign language document in paper under cover of Form SE if the electronic filing or submission includes an English summary or English translation of the foreign language document in accordance with § 232.306(b) or if permitted by the applicable form.

(g) A foreign government or political subdivision that is not filing in electronic format an English translation of its latest annual budget submitted as Exhibit B to Form 18 (§ 249.218 of this chapter) or Exhibit (c) to Form 18–K (§ 249.318 of this chapter) must file a copy of the foreign language version of its latest annual budget in paper under cover of Form SE in accordance with § 232.306(c) of this chapter.

* * * * *

§ 232.601 [Removed and Reserved]

10. § 232.601 is removed and reserved.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

11. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

12. Amend Form F–1 (referenced in § 239.31), General Instructions II., by adding paragraphs C. and D. to read as follows:

(**Note:** The text of Form F–1 does not and the amendment will not appear in the Code of Federal Regulations.)

OMB Approval
OMB Number: 3235–0258
Expires: January 31, 2005
Estimated average burden hours per response: 471.0

Securities and Exchange Commission, Washington, D.C. 20549

Form F–1—Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. A registrant must file the Form F–1 registration statement in electronic format via the Commission's Electronic Data Gathering and Retrieval System (EDGAR) in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232), except that a registrant that has obtained a hardship exception under Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202) may file the registration statement in paper. For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with questions about the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

D. The Form F–1 registration statement must be in the English language, as required by Regulation S–T Rule 306 (17 CFR 232.306) for electronic filings and Securities Act Rule 403(c) (17 CFR 230.403(c)), generally. If the registration statement requires the inclusion, as an exhibit or attachment, of a document that is in a foreign language, the registrant must provide instead either an English translation or an English summary of the foreign language document in accordance with Securities Act Rule 403(c) (17 CFR 230.403(c)) for both electronic and paper filings. The registrant may submit a copy of the unabridged foreign language document along with the English translation or English summary as permitted by Regulation S–T Rule 306(b) (17 CFR 232.306(b)) for electronic filings or by Securities Act Rule 403(c)(4) (17 CFR 230.403(c)(4)) for paper filings.

* * * * *

13. Amend Form F–2 (referenced in § 239.32), General Instructions II., by adding paragraphs C. and D. to read as follows:

(**Note:** The text of Form F–2 does not and the amendment will not appear in the Code of Federal Regulations.)

OMB Approval
OMB Number: 3235–0257
Expires: September 30, 2003
Estimated average burden hours per response: 140.0

Securities and Exchange Commission, Washington, D.C. 20549

Form F–2—Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. A registrant must file the Form F–2 registration statement in electronic format via the Commission's Electronic Data Gathering and Retrieval System (EDGAR) in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232), except that a registrant that has obtained a hardship exception under Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202) may file the registration statement in paper. For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with questions about the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

D. The Form F–2 registration statement must be in the English language, as required by Regulation S–T Rule 306 (17 CFR 232.306) for electronic filings and Securities Act Rule 403(c) (17 CFR 230.403(c)), generally. If the registration statement requires the inclusion, as an exhibit or attachment, of a document that is in a foreign language, the registrant must provide instead either an English translation or an English summary of the foreign language document in accordance with Securities Act Rule 403(c) (17 CFR 230.403(c)) for both electronic and paper filings. The registrant may submit a copy of the unabridged foreign language document along with the English translation or English summary as permitted by Regulation S–T Rule 306(b) (17 CFR 232.306(b)) for electronic filings or by Securities Act Rule 403(c)(4) (17 CFR 230.403(c)(4)) for paper filings.

* * * * *

14. Amend Form F–3 (referenced in § 239.33), General Instructions II., by adding paragraphs D. and E. to read as follows:

(**Note:** The text of Form F–3 does not and the amendment will not appear in the Code of Federal Regulations.)

OMB Approval
OMB Number: 3235–0256
Expires: May 31, 2003
Estimated average burden hours per response: 41.5

Securities and Exchange Commission

Form F–3—Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

D. A registrant must file the Form F–3 registration statement in electronic format via the Commission's Electronic Data Gathering and Retrieval System (EDGAR) in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232), except that a registrant that has obtained a hardship exception under Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202) may file the registration statement in paper. For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with questions about the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

E. The Form F–3 registration statement must be in the English language, as required by Regulation S–T Rule 306 (17 CFR 232.306) for electronic filings and Securities Act Rule 403(c) (17 CFR 230.403(c)), generally. If the registration statement requires the inclusion, as an exhibit or attachment, of a document that is in a foreign language, the registrant must provide instead either an English translation or an English summary of the foreign language document in accordance with Securities Act Rule 403(c) (17 CFR 230.403(c)) for both electronic and paper filings. The registrant may submit a copy of the unabridged foreign language document along with the English translation or English summary as permitted by Regulation S–T Rule 306(b) (17 CFR 232.306(b)) for electronic filings or by Securities Act Rule 403(c)(4) (17 CFR 230.403(c)(4)) for paper filings.

* * * * *

15. Amend Form F–4 (referenced in § 239.34), General Instructions D., by adding paragraphs 4. and 5. to read as follows:

(**Note:** The text of Form F–4 does not and the amendment will not appear in the Code of Federal Regulations.)

OMB Approval
OMB Number: 3235–0325
Expires: October 31, 2004
Estimated average burden hours per response: 1311

Securities and Exchange Commission, Washington D.C. 20549

F–4—Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

D. Application of General Rules and Regulations

* * * * *

4. A registrant must file the Form F–4 registration statement in electronic format via the Commission's Electronic Data Gathering and Retrieval System (EDGAR) in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232), except that a registrant that has obtained a hardship exception under Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202) may file the registration statement in paper. For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with questions about the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

5. The Form F–4 registration statement must be in the English language, as required by Regulation S–T Rule 306 (17 CFR 232.306) for electronic filings and Securities Act Rule 403(c) (17 CFR 230.403(c)), generally. If the registration statement requires the inclusion, as an exhibit or attachment, of a document that is in a foreign language, the registrant must provide instead either an English

translation or an English summary of the foreign language document in accordance with Securities Act Rule 403(c) (17 CFR 230.403(c)) for both electronic and paper filings. The registrant may submit a copy of the unabridged foreign language document along with the English translation or English summary as permitted by Regulation S–T Rule 306(b) (17 CFR 232.306(b)) for electronic filings or by Securities Act Rule 403(c)(4) (17 CFR 230.403(c)(4)) for paper filings.

* * * * *

16. Amend Form F–6 (referenced in § 239.36), General Instructions III, by revising paragraph C. to read as follows:

(**Note:** The text of Form F–6 does not and the amendment will not appear in the Code of Federal Regulations.)

OMB Approval
OMB Number: 3235–0292
Expires: October 31, 2002
Estimated average burden hours per response: 1.0

Securities and Exchange Commission, Washington D.C. 20549

Form F–6—Registration Statement Under the Securities Act of 1933 for Depositary Shares Evidenced by American Depositary Receipts

* * * * *

General Instructions

* * * * *

III. Application of General Rules and Regulations

* * * * *

C. You must file the Form F–6 registration statement in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232). For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

If filing the registration statement in paper under a hardship exemption in Rule 201 or 202 of Regulation S–T (17 CFR 232.201 or 232.202), or as otherwise permitted, you must file the number of copies of the registration statement and of each amendment required by Securities Act Rules 402 and 472 (17 CFR 230.402 and 230.472), except that you need only file three additional copies instead of the ten referred to in Rule 402(b) (17 CFR 230.402(b)). You may also file only three additional copies instead of the eight referred to in Securities Act Rule 472(a) (17 CFR 230.472(a)).

* * * * *

17. Amend Form F–7 (referenced in § 239.37), General Instructions II, by revising paragraphs C., E., G., and H. to read as follows:

(**Note:** The text of Form F–7 does not and the amendment will not appear in the Code of Federal Regulations.)

OMB Approval
OMB Number: 3235–0383
Expires: May 31, 2003
Estimated average burden hours per response: 1.0

Securities and Exchange Commission, Washington D.C. 20549

Form F–7—Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. A registrant must file the registration statement in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232). For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

If filing the registration statement in paper under a hardship exemption in Rule 201 or 202 of Regulation S–T (17 CFR 232.201 or 232.202), or as otherwise permitted, a registrant must file with the Commission at its principal office five copies of the complete registration statement and any amendments, including exhibits and all other documents filed as a part of the registration statement or amendment. The registrant must bind, staple or otherwise compile each copy in one or more parts without stiff covers. The registrant must further bind the registration statement or amendment on the side or stitching margin in a manner that leaves the reading matter legible. The registrant must provide three additional copies of the registration statement or amendment without exhibits to the Commission.

* * * * *

E. An electronic filer must provide the signatures required for the registration statement or amendment in accordance with Regulation S–T Rule 302 (17 CFR 232.302). A registrant filing in paper must have at least one copy of the registration statement or amendment signed in accordance with Securities Act Rule 402(e) (17 CFR 230.402(e)) by the persons whose signatures are required for this registration statement. A registrant must also conform the unsigned copies.

* * * * *

G. A registrant must file the registration statement or amendment in electronic format in the English language in accordance with Regulation S–T Rule 306 (17 CFR 232.306). A registrant may file part of the prospectus or exhibit or other attachment to the registration statement or amendment in both French and English if it included the French text to comply with the requirements of the Canadian securities administrator or other Canadian authority and, for an electronic filing, if the filing is an HTML document, as defined in Regulation S–T Rule 11 (17 CFR 232.11). For both an electronic filing and a paper filing, a registrant may provide an English translation or English summary of a foreign language document as an exhibit or other attachment to the registration statement or amendment as permitted by the rules of the applicable Canadian securities administrator.

H. For a paper filing, one signed original of the registration statement or amendment must be numbered sequentially (in addition to any internal numbering that otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page through the last page of the registration statement or amendment, including any exhibits or attachments. A paper filer must disclose the total number of pages on the first page of the sequentially numbered registration statement or amendment.

* * * * *

18. Amend Form F–8 (referenced in § 239.38), General Instructions IV, by revising paragraphs C., E., I., and J. to read as follows:

(**Note:** The text of Form F–8 does not and the amendment will not appear in the Code of Federal Regulations.)

OMB Approval
OMB Number: 3235–0378
Expires: May 31, 2003
Estimated average burden hours per response: 0.5

Securities and Exchange Commission, Washington D.C. 20549

Form F–8—Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

IV. Application of General Rules and Regulations

* * * * *

C. A registrant must file the registration statement in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232). For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

If filing the registration statement in paper under a hardship exemption in Rule 201 or 202 of Regulation S–T (17 CFR 232.201 or 232.202), or as otherwise permitted, a registrant must file with the Commission at its principal office five copies of the complete registration statement and any amendments, including exhibits and all other documents filed as a part of the registration statement or amendment. The registrant must bind, staple or otherwise compile each copy in one or more parts without stiff covers. The registrant must further bind the registration statement or amendment on the side or stitching margin in a manner that leaves the reading matter legible. The registrant must provide three additional copies of the

registration statement or amendment without exhibits to the Commission.

* * * * *

E. An electronic filer must provide the signatures required for the registration statement or amendment in accordance with Regulation S–T Rule 302 (17 CFR 232.302). A registrant filing in paper must have at least one copy of the registration statement or amendment signed in accordance with Securities Act Rule 402(e) (17 CFR 230.402(e)) by the persons whose signatures are required for this registration statement. A registrant must also conform the unsigned copies.

* * * * *

I. A registrant must file the registration statement or amendment in electronic format in the English language in accordance with Regulation S–T Rule 306 (17 CFR 232.306). A registrant may file part of the prospectus or exhibit or other attachment to the registration statement or amendment in both French and English if it included the French text to comply with the requirements of the Canadian securities administrator or other Canadian authority and, for an electronic filing, if the filing is an HTML document, as defined in Regulation S–T Rule 11 (17 CFR 232.11). For both an electronic filing and a paper filing, a registrant may provide an English translation or English summary of a foreign language document as an exhibit or other attachment to the registration statement or amendment as permitted by the rules of the applicable Canadian securities administrator.

J. A paper filer must number sequentially one signed original of the registration statement or amendment (in addition to any internal numbering that otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page through the last page of the registration statement or amendment, including any exhibits or attachments. A paper filer must disclose the total number of pages on the first page of the sequentially numbered registration statement or amendment.

* * * * *

19. Amend Form F–9 (referenced in § 239.39), General Instructions II, by revising paragraphs D., F., I., and J. to read as follows:

(**Note:** The text of Form F–9 does not and the amendment will not appear in the Code of Federal Regulations.)

OMB Approval
OMB Number: 3235–0377
Expires: April 30, 2003
Estimated average burden hours per response. 6.0

Securities and Exchange Commission
Washington D.C. 20549

Form F–9—Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

D. A registrant must file the registration statement in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232). For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

If filing the registration statement in paper under a hardship exemption in Rule 201 or 202 of Regulation S–T (17 CFR 232.201 or 232.202), or as otherwise permitted, a registrant must file with the Commission at its principal office five copies of the complete registration statement and any amendments, including exhibits and all other documents filed as a part of the registration statement or amendment. The registrant must bind, staple or otherwise compile each copy in one or more parts without stiff covers. The registrant must further bind the registration statement or amendment on the side or stitching margin in a manner that leaves the reading matter legible. The registrant must provide three additional copies of the registration statement or amendment without exhibits to the Commission.

* * * * *

F. An electronic filer must provide the signatures required for the registration statement or amendment in accordance with Regulation S–T Rule 302 (17 CFR 232.302). A registrant filing in paper must have at least one copy of the registration statement or amendment signed in accordance with Securities Act Rule 402(e) (17 CFR 230.402(e)) by the persons whose signatures are required for this registration statement. A registrant must also conform the unsigned copies.

* * * * *

I. A registrant must file the registration statement or amendment in electronic format in the English language in accordance with Regulation S–T Rule 306 (17 CFR 232.306). A registrant may file part of the prospectus or exhibit or other attachment to the registration statement or amendment in both French and English if it included the French text to comply with the requirements of the Canadian securities administrator or other Canadian authority and, for an electronic filing, if the filing is an HTML document, as defined in Regulation S–T Rule 11 (17 CFR 232.11). For both an electronic filing and a paper filing, a registrant may provide an English translation or English summary of a foreign language document as an exhibit or other attachment to the registration statement or amendment as permitted by the rules of the applicable Canadian securities administrator.

J. A paper filer must number sequentially one signed original of the registration statement or amendment (in addition to any internal numbering that otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page through the last page of the registration statement or amendment, including any exhibits or attachments. A paper filer must disclose the total number of pages on the first page of the sequentially numbered registration statement or amendment.

* * * * *

20. Amend Form F–10 (referenced in § 239.40), General Instructions II, by revising paragraphs D., F., J., and K. to read as follows:

(**Note:** The text of Form F–10 does not and the amendment will not appear in the Code of Federal Regulations.)

OMB Approval
OMB number: 3235–0380
Expires: April 30, 2003
Estimated average burden hours per response: 6.0

Securities and Exchange Commission
Washington D.C. 20549

Form F–10—Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

D. A registrant must file the registration statement in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232). For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

If filing the registration statement in paper under a hardship exemption in Rule 201 or 202 of Regulation S–T (17 CFR 232.201 or 232.202), or as otherwise permitted, a registrant must file with the Commission at its principal office five copies of the complete registration statement and any amendments, including exhibits and all other documents filed as a part of the registration statement or amendment. The registrant must bind, staple or otherwise compile each copy in one or more parts without stiff covers. The registrant must further bind the registration statement or amendment on the side or stitching margin in a manner that leaves the reading matter legible. The registrant must provide three additional copies of the registration statement or amendment without exhibits to the Commission.

* * * * *

F. An electronic filer must provide the signatures required for the registration statement or amendment in accordance with Regulation S–T Rule 302 (17 CFR 232.302). A registrant filing in paper must have at least one copy of the registration statement or amendment signed in accordance with Securities Act Rule 402(e) (17 CFR 230.402(e)) by the persons whose signatures are required for this registration statement. A registrant must also conform the unsigned copies.

* * * * *

J. A registrant must file the registration statement or amendment in electronic format

in the English language in accordance with Regulation S–T Rule 306 (17 CFR 232.306). A registrant may file part of the prospectus or exhibit or other attachment to the registration statement or amendment in both French and English if it included the French text to comply with the requirements of the Canadian securities administrator or other Canadian authority and, for an electronic filing, if the filing is an HTML document, as defined in Regulation S–T Rule 11 (17 CFR 232.11). For both an electronic filing and a paper filing, a registrant may provide an English translation or English summary of a foreign language document as an exhibit or other attachment to the registration statement or amendment as permitted by the rules of the applicable Canadian securities administrator.

K. A paper filer must number sequentially one signed original of the registration statement or amendment (in addition to any internal numbering that otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page through the last page of the registration statement or amendment, including any exhibits or attachments. A paper filer must disclose the total number of pages on the first page of the sequentially numbered registration statement or amendment.

* * * * *

21. Amend Form F–80 (referenced in § 239.41), General Instructions IV, by revising paragraphs C., E., I., and J. to read as follows:

(**Note:** The text of Form F–80 does not and the amendments will not appear in the Code of Federal Regulations.)

OMB Approval
OMB Number: 3235–0404
Expires: October 31, 2003
Estimated average burden hours per response: 0.5

Securities and Exchange Commission
Washington D.C. 20549

Form F–80—Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

* * * * *

IV. Application of General Rules and Regulations

* * * * *

C. A registrant must file the registration statement in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232). For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

If filing the registration statement in paper under a hardship exemption in Rule 201 or 202 of Regulation S–T (17 CFR 232.201 or 232.202), or as otherwise permitted, a registrant must file with the Commission at its principal office five copies of the complete registration statement and any amendments, including exhibits and all other documents filed as a part of the registration statement or amendment. The registrant must bind, staple or otherwise compile each copy in one or more parts without stiff covers. The registrant must further bind the registration statement or amendment on the side or stitching margin in a manner that leaves the reading matter legible. The registrant must provide three additional copies of the registration statement or amendment without exhibits to the Commission.

* * * * *

E. An electronic filer must provide the signatures required for the registration statement or amendment in accordance with Regulation S–T Rule 302 (17 CFR 232.302). A registrant filing in paper must have at least one copy of the registration statement or amendment signed in accordance with Securities Act Rule 402(e) (17 CFR 230.402(e)) by the persons whose signatures are required for this registration statement. A registrant must also conform the unsigned copies.

* * * * *

I. A registrant must file the registration statement or amendment in electronic format in the English language in accordance with Regulation S–T Rule 306 (17 CFR 232.306). A registrant may file part of the prospectus or exhibit or other attachment to the registration statement or amendment in both French and English if it included the French text to comply with the requirements of the Canadian securities administrator or other Canadian authority and, for an electronic filing, if the filing is an HTML document, as defined in Regulation S–T Rule 11 (17 CFR 232.11). For both an electronic filing and a paper filing, a registrant may provide an English translation or English summary of a foreign language document as an exhibit or other attachment to the registration statement or amendment as permitted by the rules of the applicable Canadian securities administrator.

J. A paper filer must number sequentially one signed original of the registration statement or amendment (in addition to any internal numbering that otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page through the last page of the registration statement or amendment, including any exhibits or attachments. A paper filer must disclose the total number of pages on the first page of the sequentially numbered registration statement or amendment.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

22. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–*1*, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

23. Amend § 240.12b–12 by removing the authority citation following § 240.12b–12 and by revising paragraph (d) to read as follows:

§ 240.12b–12 Requirements as to paper, printing and language.

* * * * *

(d)(1) All Exchange Act filings and submissions must be in the English language, except as otherwise provided by this section. If a filing or submission requires the inclusion of a document that is in a foreign language, a party must submit instead a fair and accurate English translation of the entire foreign language document, except as provided by paragraph (d)(3) of this section.

(2) If a filing or submission subject to review by the Division of Corporation Finance requires the inclusion of a foreign language document as an exhibit or attachment, a party must submit a fair and accurate English translation of the foreign language document if consisting of any of the following, or an amendment of any of the following:

(i) Articles of incorporation, memoranda of association, bylaws, and other comparable documents, whether original or restated;

(ii) Instruments defining the rights of security holders, including indentures qualified or to be qualified under the Trust Indenture Act of 1939;

(iii) Voting agreements, including voting trust agreements;

(iv) Contracts to which directors, officers, promoters, voting trustees or security holders named in a registration statement, report or other document are parties;

(v) Contracts upon which a filer's business is substantially dependent;

(vi) Audited annual and interim consolidated financial information; and

(vii) Any document that is or will be the subject of a confidential treatment request under § 240.24b–2 or § 230.406 of this chapter.

(3)(i) A party may submit an English summary instead of an English translation of a foreign language document as an exhibit or attachment to a filing or submission subject to review by the Division of Corporation Finance, as long as:

(A) The foreign language document does not consist of any of the subject matter enumerated in paragraph (d)(2) of this section; or

(B) The applicable form permits the use of an English summary.

(ii) Any English summary submitted under paragraph (d)(3) of this section must:

(A) Fairly and accurately summarize the terms of each material provision of the foreign language document; and

(B) Fairly and accurately describe the terms that have been omitted or abridged.

(4) When submitting an English summary or English translation of a foreign language document under this section, a party must identify the submission as either an English summary or English translation. A party may submit a copy of the unabridged foreign language document when including an English summary or English translation of a foreign language document in a filing or submission. A party must provide a copy of any foreign language document upon the request of Commission staff.

(5) A foreign government or its political subdivision must provide a fair and accurate English translation of its latest annual budget submitted as Exhibit B to Form 18 (§ 249.218 of this chapter) or Exhibit (c) to Form 18–K (§ 249.318 of this chapter) only if one is available. If no English translation is available, a filer must provide a copy of the foreign language version of its latest annual budget as an exhibit.

(6) A Canadian issuer may file an exhibit, attachment or other part of a Form 40–F registration statement or annual report (§ 249.240f of this chapter), Schedule 13E–4F (§ 240.13e–102), Schedule 14D–1F (§ 240.14d–102), or Schedule 14D–9F (§ 240.14d–103), that contains text in both French and English if the issuer included the French text to comply with the requirements of the Canadian securities administrator or other Canadian authority and, for an electronic filing, if the filing is an HTML document, as defined in Regulation S–T Rule 11 (17 CFR 232.11).

* * * * *

24. Amend § 240.13e–102 by revising paragraphs A., B., E., and F. of General Instructions II of Schedule 13E–4F to read as follows:

§ 240.13e–102 Schedule 13E–4F. Tender offer statement pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 and § 240.13–4 thereunder.

* * * * *

General Instructions

* * * * *

II. Filing Instructions and Fees

A.(1) The issuer must file this Schedule and any amendment to the Schedule (see Part I, Item 1.(b)), including all exhibits and other documents filed as part of the Schedule or amendment, in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232). For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

(2) If filing the Schedule in paper under a hardship exemption in 17 CFR 232.201 or 232.202 of Regulation S–T, or as otherwise permitted, the issuer must file with the Commission at its principal office five copies of the complete Schedule and any amendment, including exhibits and all other documents filed as a part of the Schedule or amendment. The issuer must bind, staple or otherwise compile each copy in one or more parts without stiff covers. The issuer must further bind the Schedule or amendment on the side or stitching margin in a manner that leaves the reading matter legible. The issuer must provide three additional copies of the Schedule or amendment without exhibits to the Commission.

B. An electronic filer must provide the signatures required for the Schedule or amendment in accordance with 17 CFR 232.302 of Regulation S–T. An issuer filing in paper must have the original and at least one copy of the Schedule and any amendment signed in accordance with Exchange Act Rule 12b–11(d) (17 CFR 12b–11(d)) by the persons whose signatures are required for this Schedule or amendment. The issuer must also conform the unsigned copies.

* * * * *

E. The issuer must file the Schedule or amendment in electronic format in the English language in accordance with 17 CFR 232.306 of Regulation S–T. The issuer may file part of the Schedule or amendment, or exhibit or other attachment to the Schedule or amendment, in both French and English if the issuer included the French text to comply with the requirements of the Canadian securities administrator or other Canadian authority and, for an electronic filing, if the filing is an HTML document, as defined in 17 CFR 232.11 of Regulation S–T. For both an electronic filing and a paper filing, the issuer may provide an English translation or English summary of a foreign language document as an exhibit or other attachment to the Schedule or amendment as permitted by the rules of the applicable Canadian securities administrator.

F. A paper filer must number sequentially the signed original of the Schedule or amendment (in addition to any internal numbering that otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page through the last page of the Schedule or amendment, including any exhibits or attachments. A paper filer must disclose the total number of pages on the first page of the sequentially numbered Schedule or amendment.

* * * * *

25. Amend § 240.14d–102 by revising paragraphs A., B., E., and F. of General Instructions II of Schedule 14D–1F to read as follows:

§ 240.14d–102 Schedule 14D–1F. Tender offer statement pursuant to rule 14d–1(b) under the Securities Exchange Act of 1934.

* * * * *

General Instructions

* * * * *

II. Filing Instructions and Fees

A.(1) The bidder must file this Schedule and any amendment to the Schedule (see Part I, Item 1.(b)), including all exhibits and other documents filed as part of the Schedule or amendment, in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232). For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

(2) If filing the Schedule in paper under a hardship exemption in 17 CFR 232.201 or 232.202 of Regulation S–T, or as otherwise permitted, the bidder must file with the Commission at its principal office five copies of the complete Schedule and any amendment, including exhibits and all other documents filed as a part of the Schedule or amendment. The bidder must bind, staple or otherwise compile each copy in one or more parts without stiff covers. The bidder must further bind the Schedule or amendment on the side or stitching margin in a manner that leaves the reading matter legible. The bidder must provide three additional copies of the Schedule or amendment without exhibits to the Commission.

B. An electronic filer must provide the signatures required for the Schedule or amendment in accordance with 17 CFR 232.302 of Regulation S–T. A bidder filing in paper must have the original and at least one copy of the Schedule and any amendment signed in accordance with Exchange Act Rule 12b–11(d) (17 CFR 12b–11(d)) by the persons whose signatures are required for this Schedule or amendment. The bidder must also conform the unsigned copies.

* * * * *

E. The bidder must file the Schedule or amendment in electronic format in the English language in accordance with 17 CFR 232.306 of Regulation S–T. The bidder may file part of the Schedule or amendment, or exhibit or other attachment to the Schedule or amendment, in both French and English if the bidder included the French text to comply with the requirements of the Canadian securities administrator or other Canadian authority and, for an electronic filing, if the filing is an HTML document, as defined in 17 CFR 232.11 of Regulation S–T. For both an electronic filing and a paper filing, the bidder may provide an English translation or English summary of a foreign language document as an exhibit or other attachment to the Schedule or amendment as permitted by the rules of the applicable Canadian securities administrator.

F. A paper filer must number sequentially the signed original of the Schedule or amendment (in addition to any internal

numbering that otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page through the last page of the Schedule or amendment, including any exhibits or attachments. A paper filer must disclose the total number of pages on the first page of the sequentially numbered Schedule or amendment.

* * * * *

26. Amend § 240.14d–103 by revising General Instructions II of Schedule 14D–9F to read as follows:

§ 240.14d–103 Schedule 14D–9F. Solicitation/recommendation statement pursuant to section 14(d)(4) of the Securities Exchange Act of 1934 and rules 14d–1(b) and 14e–2(c) thereunder.

* * * * *

General Instructions

* * * * *

II. Filing Instructions

A.(1) The subject issuer must file this Schedule and any amendment to the Schedule (see Part I, Item 1.(b)), including all exhibits and other documents filed as part of the Schedule or amendment, in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232). For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

(2) If filing the Schedule in paper under a hardship exemption in 17 CFR 232.201 or 232.202 of Regulation S–T, or as otherwise permitted, the subject issuer must file with the Commission at its principal office five copies of the complete Schedule and any amendment, including exhibits and all other documents filed as a part of the Schedule or amendment. The subject issuer must bind, staple or otherwise compile each copy in one or more parts without stiff covers. The subject issuer must further bind the Schedule or amendment on the side or stitching margin in a manner that leaves the reading matter legible. The subject issuer must provide three additional copies of the Schedule or amendment without exhibits to the Commission.

B. An electronic filer must provide the signatures required for the Schedule or amendment in accordance with 17 CFR 232.302 of Regulation S–T. A subject issuer filing in paper must have the original and at least one copy of the Schedule and any amendment signed in accordance with Exchange Act Rule 12b–11(d) (17 CFR 12b–11(d)) by the persons whose signatures are required for this Schedule or amendment. The subject issuer must also conform the unsigned copies.

C. The subject issuer must file the Schedule or amendment in electronic format in the English language in accordance with 17 CFR 232.306 of Regulation S–T. The subject issuer may file part of the Schedule or amendment, or exhibit or other attachment to the Schedule or amendment, in both French and English if the bidder included the French text to comply with the requirements of the Canadian securities administrator or other Canadian authority and, for an electronic filing, if the filing is an HTML document, as defined in 17 CFR 232.11 of Regulation S–T. For both an electronic filing and a paper filing, the subject issuer may provide an English translation or English summary of a foreign language document as an exhibit or other attachment to the Schedule or amendment as permitted by the rules of the applicable Canadian securities administrator.

D. A paper filer must number sequentially the signed original of the Schedule or amendment (in addition to any internal numbering that otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page through the last page of the Schedule or amendment, including any exhibits or attachments. A paper filer must disclose the total number of pages on the first page of the sequentially numbered Schedule or amendment.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

27. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

28. Amend Form 20–F (referenced in § 249.220f) by revising General Instruction D. and the first three paragraphs of the Instructions as to Exhibits to read as follows:

(**Note:** The text of Form 20–F does not and the amendment will not appear in the Code of Federal Regulations.)

OMB Approval
OMB Number: 3235–0288
Expires: January 31, 2005
Estimated average burden hours per response: 431.0

United States Securities and Exchange Commission

Washington, D.C. 20549

Form 20–F

* * * * *

General Instructions

* * * * *

D. How To File Registration Statements and Reports on This Form

(a) You must file the Form 20–F registration statement or annual report in electronic format via our Electronic Data Gathering and Retrieval System (EDGAR) in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232). The Form 20–F registration statement or annual report must be in the English language as required by Regulation S–T Rule 306 (17 CFR 232.306). You must provide the signatures required for the Form 20–F registration statement or annual report in accordance with Regulation S–T Rule 302 (17 CFR 232.302). If you have technical questions about EDGAR or want to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. If you have questions about the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

(b) If you are filing the Form 20–F registration statement or annual report in paper under a hardship exemption in Rule 201 or 202 of Regulation S–T (17 CFR 232.201 or 232.202), or as otherwise permitted, you must file with the Commission (i) three complete copies of the registration statement or report, including financial statements, exhibits and all other papers and documents filed as part of the registration statement or report, and (ii) five additional copies of the registration statement or report, which need not contain exhibits. Whether filing electronically or in paper, you must also file at least one complete copy of the registration statement or report, including financial statements, exhibits and all other papers and documents filed as part of the registration statement or report, with each exchange on which any class of securities is or will be registered. When submitting the Form 20–F in paper, you must sign at least one complete copy of the registration statement or report filed with the Commission and one copy filed with each exchange in accordance with Exchange Act Rule 12b–11(d) (17 CFR 12b–11(d)). You must conform the unsigned copies when submitting the Form 20–F registration statement or report in paper. When submitting the Form 20–F in electronic format to the Commission, you may submit a paper copy containing typed signatures to each United States stock exchange in accordance with Regulation S–T Rule 302(c) (17 CFR 302(c)). See also Exchange Act Rule 12b–12(d) and Form 20–F's Instructions as to Exhibits for requirements concerning use of the English language and treatment of foreign language documents.

(c) When registration statements and reports are permitted to be filed in paper, they are filed with the Commission by sending or delivering them to our File Desk between the hours of 9 a.m. and 5:30 p.m., Washington, DC time. The File Desk is closed on weekends and federal holidays. If you file a paper registration statement or report by mail or by any means other than hand delivery, the address is U.S. Securities and Exchange Commission, Attention: File Desk, 450 Fifth Street, NW., Washington, DC 20549. We consider documents to be filed on the date our File Desk receives them.

* * * * *

Instructions as to Exhibits

File the exhibits listed below as part of an Exchange Act registration statement or report. Exchange Act Rule 12b–32 explains the circumstances in which you may incorporate exhibits by reference. Exchange Act Rule 24b–2 explains the procedure to be followed in requesting confidential treatment of information required to be filed.

Previously filed exhibits may be incorporated by reference. If any previously filed exhibits have been amended or modified, file copies of the amendment or modification or copies of the entire exhibit as amended or modified.

If the Form 20–F registration statement or annual report requires the inclusion, as an exhibit or attachment, of a document that is in a foreign language, you must provide instead either an English translation or an English summary of the foreign language document in accordance with Exchange Act Rule 12b–12(d) (17 CFR 240.12b–12(d)) for both electronic and paper filings. You may submit a copy of the unabridged foreign language document along with the English translation or summary as permitted by Regulation S–T Rule 306(b) (17 CFR 232.306(b)) for electronic filings or by Exchange Act Rule 12b–12(d)(4) (17 CFR 240.12b–12(d)(4)) for paper filings.

Include an exhibit index in each registration statement or report you file, immediately preceding the exhibits you are filing. The exhibit index must list each exhibit according to the number assigned to it below. If an exhibit is incorporated by reference, note that fact in the exhibit index. For paper filings, the pages of the manually signed original registration statement should be numbered in sequence, and the exhibit index should give the page number in the sequential numbering system where each exhibit can be found.

* * * * *

29. Amend Form 40–F (referenced in § 249.240f) by revising paragraph (4) of General Instruction B. and paragraphs (7) and (8) of General Instruction D. to read as follows:

(**Note:** The text of Form 40–F does not and the amendment will not appear in the Code of Federal Regulations.)

OMB Approval
OMB Number: 3235–0381
Expires: March 31, 2003
Estimated average burden hours per response: 0.5

U.S. Securities and Exchange Commission

Washington, D.C. 20549

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on This Form

* * * * *

(4) A filer must file the Form 40–F registration statement or annual report in electronic format in the English language in accordance with Regulation S–T Rule 306 (17 CFR 232.306). A filer may file part of an exhibit or other attachment to the Form 40–F registration statement or annual report in both French and English if it included the French text to comply with the requirements of the Canadian securities administrator or other Canadian authority and, for an electronic filing, if the filing is an HTML document, as defined in Regulation S–T Rule 11 (17 CFR 232.11). For both an electronic filing and a paper filing, a filer may provide an English translation or English summary of a foreign language document as an exhibit or other attachment to the registration statement or amendment as permitted by the rules of the applicable Canadian securities administrator.

* * * * *

D. Application of General Rules and Regulations

* * * * *

(7) A filer must file the Form 40–F registration statement or annual report in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232). For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

If filing the Form 40–F registration statement or annual report in paper under a hardship exemption in Rule 201 or 202 of Regulation S–T (17 CFR 232.201 or 232.202), or as otherwise permitted, a filer must file with the Commission at its principal office five copies of the complete registration statement or annual report, including exhibits and all other documents filed as a part of the registration statement or annual report. The filer must bind, staple or otherwise compile each copy in one or more parts without stiff covers. The filer must further bind the registration statement or annual report on the side or stitching margin in a manner that leaves the reading matter legible. The filer must provide three additional copies of the registration statement or annual report without exhibits to the Commission.

* * * * *

(8) An electronic filer must provide the signatures required for the Form 40–F registration statement or annual report in accordance with Regulation S–T Rule 302 (17 CFR 232.302). A paper filer must have at least one copy of the Form 40–F registration statement or annual report signed by an officer authorized to sign the registration statement or annual report. A paper filer must also conform the unsigned copies.

* * * * *

30. Amend Form CB (referenced in § 239.800 and § 249.480) by revising the cover page, paragraphs A., B., and D. of General Instructions II, and paragraphs (1), (2), and (3) of Part II to read as follows:

(**Note:** The text of Form CB does not and the amendment will not appear in the Code of Federal Regulations.)

OMB Approval
OMB Number: 3235–0518 Expires: March 31, 2005 Estimated average burden hours per response: 2.0

United States Securities and Exchange Commission

Washington, D.C. 20549

Form CB—Tender Offer/Rights Offering Notification Form (Amendment No. ____)

Please place an X in the box(es) to designate the appropriate rule provision(s) relied upon to file this Form:

Securities Act Rule 801 (Rights Offering) ☐
Securities Act Rule 802 (Exchange Offer) ☐
Securities Act Rule 13e–4(h)(8) (Issuer Tender Offer) ☐
Exchange Act Rule 14d–1(c) (Third Party Tender Offer) ☐
Exchange Act Rule 14e–2(d) (Subject Company Response) ☐
Filed or submitted in paper if permitted by Regulation S–T Rule 101(b)(8) ☐

Note: Regulation S–T Rule 101(b)(8) only permits the filing or submission of a Form CB in paper by a party that is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.

* * * * *

General Instructions

* * * * *

II. Instructions for Submitting Form

A. (1) If the party filing or submitting the Form CB has reporting obligations under Exchange Act Section 13 or 15(d), Regulation S–T Rule 101(a)(1)(vi) (17 CFR 232.101(a)(1)(vi)) requires the submission of the Form CB in electronic format via the Commission's Electronic Data Gathering and Retrieval System (EDGAR) in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232). For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

(2) If the party filing or submitting the Form CB is not an Exchange Act reporting company, Regulation S–T Rule 101(b)(8) (17 CFR 232.101(b)(8)) permits the submission of the Form CB either via EDGAR or in paper. When filing or submitting the Form CB in electronic format, either voluntarily or as a mandated EDGAR filer, a party must also file or submit on EDGAR all home jurisdiction documents required by Parts I and II of this Form, except as provided by the Note following paragraph (2) of Part II.

(3) A party may also file a Form CB in paper under a hardship exemption provided by Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202). When submitting a Form CB in paper under a hardship exemption, a party must provide the legend required by Regulation S–T Rule 201(a)(2) or 202(c) (17 CFR 232.201(a)(2) or 232.202(c)) on the cover page of the Form CB.

(4) If filing the Form CB in paper in accordance with Rule 101(b)(8) or a hardship exemption, you must furnish five copies of this Form and any amendment to the Form (see Part I, Item 1.(b)), including all exhibits and any other paper or document furnished as part of the Form, to the Commission at its principal office. You must bind, staple or otherwise compile each copy in one or more parts without stiff covers. You must make the binding on the side or stitching margin in a manner that leaves the reading matter legible.

B. When submitting the Form CB in electronic format, the persons specified in Part IV must provide signatures in accordance with Regulation S–T Rule 302 (17 CFR 232.302). When submitting the Form CB in paper, the persons specified in Part IV

must sign the original and at least one copy of the Form and any amendments. You must conform any unsigned copies. The specified persons may provide typed or facsimile signatures in accordance with Securities Act Rule 402(e) (17 CFR 230.402(e)) or Exchange Act Rule 12b–11(d) (17 CFR 240.12b–11(d)) as long as the filer retains copies of signatures manually signed by each of the specified persons for five years.

* * * * *

D. If filing in paper, in addition to any internal numbering you may include, sequentially number the signed original of the Form and any amendments by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of the document and any exhibits or attachments. Further, you must set forth the total number of pages contained in a numbered original on the first page of the document.

* * * * *

Part II—Information Not Required To Be Sent to Security Holders

* * * * *

(1) Furnish to the Commission either an English translation or English summary of any reports or information that, in accordance with the requirements of the home jurisdiction, must be made publicly available in connection with the transaction but need not be disseminated to security holders. Any English summary submitted must meet the requirements of Regulation S–T Rule 306(a) (17 CFR 232.306(a)) if submitted electronically or of Securities Act Rule 403(c)(3) (17 CFR 230.403(c)(3)) or Exchange Act Rule 12b–12(d)(3) (17 CFR 240.12b–12(d)(3)) if submitted in paper.

(2) Furnish copies of any documents incorporated by reference into the home jurisdiction document(s).

Note to paragraphs (1) and (2) of Part II: In accordance with Regulation S–T Rule 311(f) (17 CFR 232.311(f)), a party may submit a paper copy under cover of Form SE (17 CFR 239.64, 249.444, 259.603, 269.8, and 274.403) of an unabridged foreign language document when submitting an English summary in electronic format under paragraph (1) of this Part or when furnishing a foreign language document that has been incorporated by reference under paragraph (2) of this Part.

(3) If any of the persons specified in Part IV has signed the Form CB under a power of attorney, a party submitting the Form CB in electronic format must include a copy of the power of attorney signed in accordance with Regulation S–T Rule 302 (17 CFR 232.302). A party submitting the Form CB in paper must also include a copy of the signed power of attorney.

* * * * *

31. Amend Form 6–K (referenced in § 249.306) by revising the cover page and General Instructions C. and D. to read as follows:

(**Note:** The text of Form 6–K does not and the amendments will not appear in the Code of Federal Regulations.)

OMB Approval

OMB Number: 3235–0116
Expires: March 31, 2003
Estimated average burden hours per response: 2.0

Form 6–K

Securities and Exchange Commission

Washington, D.C. 20549

Report of Foreign Private Issuer

Pursuant to Rule 13a–16 or 15d–16 Under the Securities Exchange Act of 1934

For the month of _____, 20 ____
Commission File Number _____

_____

(Translation of registrant's name into English)

_____

(Address of principal executive offices)

Indicate by check mark whether the registrant files or will file annual reports under cover of Form 20–F or Form 40–F:
Form 20–F ____ Form 40–F ____

Indicate by check mark if the registrant is submitting the Form 6–K in paper as permitted by Regulation S–T Rule 101(b)(1):
____

Note: Regulation S–T Rule 101(b)(1) only permits the submission in paper of a Form 6–K if submitted solely to provide an attached annual report to security holders.

Indicate by check mark if the registrant is submitting the Form 6–K in paper as permitted by Regulation S–T Rule 101(b)(7):
____

Note: Regulation S–T Rule 101(b)(7) only permits the submission in paper of a Form 6–K if submitted to furnish a report or other document that the registrant foreign private issuer must furnish and make public under the laws of the jurisdiction in which the registrant is incorporated, domiciled or legally organized (the registrant's ''home country''), or under the rules of the home country exchange on which the registrant's securities are traded, as long as the report or other document is not a press release, is not required to be and has not been distributed to the registrant's security holders, and, if discussing a material event, has already been the subject of a Form 6–K submission or other Commission filing on EDGAR.

Indicate by check mark whether by furnishing the information contained in this Form, the registrant is also thereby furnishing the information to the Commission pursuant to Rule 12g3–2(b) under the Securities Exchange Act of 1934.
Yes ____ No ____
If ''Yes'' is marked, indicate below the file number assigned to the registrant in connection with Rule 12g3–2(b): 82–____

* * * * *

General Instructions

* * * * *

C. Preparation and Filing of Report. (1) The Form 6–K report shall consist of a cover page, the report or document furnished by the issuer, and a signature page. An issuer must submit the Form 6–K report in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232) except as discussed below. An issuer submitting the Form 6–K in electronic format must provide the signatures required for the Form 6–K report in accordance with Regulation S–T Rule 302 (17 CFR 232.302). For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 942–8900. For assistance with the EDGAR rules, call the Office of EDGAR and Information Analysis at (202) 942–2940.

(2) An issuer may submit a Form 6–K in paper under:

- Regulation S–T Rule 101(b)(1) (17 CFR 232.101(b)(1)) if the sole purpose of the Form 6–K is to furnish an annual report to security holders;
- Regulation S–T Rule 101(b)(7) to provide a report or other document that the issuer must furnish and make public under the laws of the jurisdiction in which it is incorporated, domiciled or legally organized (the issuer's ''home country''), or under the rules of the home country exchange on which the issuer's securities are traded, as long as the report or other document is not a press release, is not required to be and has not been distributed to the issuer's security holders, and, if discussing a material event, including the disclosure of annual audited or interim consolidated financial results, has already been the subject of a Form 6–K submission or other Commission filing on EDGAR; or
- A hardship exemption provided by Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202).

Note to paragraph (2): An issuer that is or will be incorporating by reference all or part of an annual or other report to security holders, or of any part of a paper Form 6–K, into an electronic filing must file the incorporated portion in electronic format as an exhibit to the filing in accordance with Regulation S–T Rule 303(b) (17 CFR 232.303(b)).

(3) When submitting a Form 6–K in paper under one of the above rules, an issuer must check the appropriate box on the cover page of the Form 6–K. When submitting a Form 6–K in paper under a hardship exemption, an issuer must provide the legend required by Regulation S–T Rule 201(a)(2) or 202(c) (17 CFR 232.201(a)(2) or 232.202(c)) on the cover page of the Form 6–K.

(4) An issuer furnishing the Form 6–K in paper under one of the above rules, or as otherwise permitted by the Commission, must deposit with the Commission eight complete copies of the Form 6–K report. An issuer must also file at least one complete copy of the Form 6–K with each United States stock exchange on which any security of the issuer is listed and registered under Section 12(b) of the Exchange Act. The issuer must have signed at least one of the paper copies deposited with the Commission and one filed with each United States stock exchange in accordance with Exchange Act Rule 12b–11(d) (17 CFR 240.12b–11(d)) when submitting the Form 6–K in paper to the Commission. An issuer submitting the Form 6–K in paper must also conform the unsigned copies. When submitting the Form 6–K in electronic format to the Commission, an issuer may submit a paper copy containing

typed signatures to each United States stock exchange in accordance with Regulation S–T Rule 302(c) (17 CFR 232.302(c)).

D. Treatment of Foreign Language Documents. (1) An issuer must submit the Form 6–K report in electronic format in the English language in accordance with Regulation S–T Rule 306 (17 CFR 232.306) and Exchange Act Rule 12b–12(d) (17 CFR 240.12b–12(d)), as referenced in Regulation S–T Rule 306(a) (17 CFR 232.306(a)), except as otherwise provided by this Form. An issuer submitting the Form 6–K in paper must meet the requirements of Exchange Act Rule 12b–12(d) (17 CFR 240.12b–12(d)). In accordance with, or in addition to, the list of documents specified in Exchange Act Rule 12b–12(d)(2) (17 CFR 240.12b–12(d)(2)), an issuer must provide a full English translation of the following documents furnished under cover of Form 6–K whether submitted electronically or in paper:

- Press releases;
- Communications and other documents distributed directly to security holders for each class of securities to which a reporting obligation under Exchange Act Section 13(a) or 15(d) pertains, except for offering circulars and prospectuses that relate entirely to securities offerings outside the United States (''foreign offerings''); and
- Documents disclosing annual audited or interim consolidated financial information.

(2) In addition to the documents specified in Exchange Act Rule 12b–12(d)(3) (17 CFR 240.12b–12(d)(3)), an issuer may furnish under cover of Form 6–K, whether submitted electronically or in paper, an English summary instead of a full English translation of a report required to be furnished and made public under the laws of the issuer's home country or the rules of the issuer's home country stock exchange, as long as it is not a press release and is not required to be and has not been distributed to the issuer's security holders. Such a document may include a report disclosing unconsolidated financial information about a parent company.

(3) An issuer is not required to submit under cover of Form 6–K an offering circular or prospectus that pertains solely to a foreign offering, even when an English translation or English summary is available, if the issuer has already submitted a Form 6–K or filed a Form 20–F or other Commission filing on EDGAR that reported material information disclosed in the offering circular or prospectus. If an issuer has not previously disclosed this material information to the Commission, it may submit in electronic format under cover of Form 6–K an English translation or English summary of the portion of the foreign offering circular or prospectus that discusses the new material information.

(4) Any submitted English summary must meet the requirements of Exchange Act Rule 12b–12(d)(3)(ii) (17 CFR 240.12b–12(d)(3)(ii)). An issuer may submit the unabridged foreign language report or other document along with the English summary or English translation as permitted by Regulation S–T Rule 306(b) (17 CFR 232.306(b)) for electronic filings and Exchange Act Rule 12b–12(d)(4) (17 CFR 240.12b–12(d)(4)) for paper filings.

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

32. The authority citation for Part 269 continues to read as follows:

Authority: 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, 78*ll*(d), unless otherwise noted.

33. Amend Form F–X (referenced in §§ 239.42, 249.250 and 269.5), General Instructions II, by revising paragraph B. to read as follows:

(**Note:** The text of Form F–X does not and the amendment will not appear in the Code of Federal Regulations.)

OMB Approval
OMB Number: 3235–0379
Expires: June 30, 2003
Estimated average burden hours per response: 2.0

United States

Securities and Exchange Commission
Washington, D.C. 20549

Form F–X—Appointment of Agent for Service of Process and Undertaking

* * * * *

General Instructions

* * * * *

II.

* * * * *

B. (1) This is [check one]:

☐ An original filing for the Filer
☐ An amended filing for the Filer

(2) Check the following box if you are filing the Form F–X in paper in accordance with Regulation S–T Rule 101(b)(9) ☐.

Note: Regulation S–T Rule 101(b)(9) only permits the filing of the Form F–X in paper:

(a) If the party filing or submitting the Form CB is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act; or

(b) If filed by a Canadian issuer when qualifying an offering statement pursuant to the provisions of Regulation A (230.251—230.263 of this chapter).

(3) A filer may also file the Form F–X in paper under a hardship exemption provided by Regulation S–T Rule 201 or 202 (17 CFR 232.201 or 232.202). When submitting the Form F–X in paper under a hardship exemption, a filer must provide the legend required by Regulation S–T Rule 201(a)(2) or 202(c) (17 CFR 232.201(a)(2) or 232.202(c)) on the cover page of the Form F–X.

* * * * *

Dated: May 14, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–12566 Filed 5–23–02;8:45am]

BILLING CODE 8010–01–P

Federal Register

Friday,
May 24, 2002

Part III

Securities and Exchange Commission

17 CFR Part 230, et al.

Proposed Amendments to Investment Company Advertising Rules; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270, and 274

[Release Nos. 33–8101; 34–45953; IC–25575; File No. S7–17–02]

RIN 3235–AH19

Proposed Amendments to Investment Company Advertising Rules

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing rule and form amendments under the Securities Act of 1933 and the Investment Company Act of 1940 to provide registered investment companies and business development companies with the ability to disclose more timely information in advertisements and to reinforce the antifraud protections that apply to investment company advertisements. The proposed amendments would implement a provision of the National Securities Markets Improvement Act of 1996 by permitting the use of a prospectus under section 10(b) of the Securities Act with respect to securities issued by an investment company that includes information the substance of which is not included in the investment company's statutory prospectus. The proposed amendments also would require enhanced disclosure in investment company advertisements and are designed to encourage advertisements that convey balanced information to prospective investors, particularly with respect to past performance.

DATES: Comments must be received on or before July 31, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–17–02; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549–0102. Electronically submitted comment letters will also be posted on the Commission's Internet site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Christopher P. Kaiser, Attorney, David S. Schwartz, Attorney, or Paul G. Cellupica, Assistant Director, at (202) 942–0721, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is proposing for comment amendments to rule 134 [17 CFR 230.134], rule 156 [17 CFR 230.156], and rule 482 [17 CFR 230.482] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''Securities Act'') and rule 34b-1 [17 CFR 270.34b-1] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] (''Investment Company Act''). The Commission also is proposing for comment technical amendments to Form N–1A [17 CFR 239.15A and 274.11A], Form N–3 [17 CFR 239.17a and 274.11b], Form N–4 [17 CFR 239.17b and 274.11c], and Form N–6 [17 CFR 239.17c and 274.11d], registration forms used by investment companies to register under the Investment Company Act and to offer their securities under the Securities Act.

Table of Contents

[1] We do not edit personal, identifying information, such as names or E-mail addresses, from electronic submissions. Submit only information that you wish to make publicly available.

I. Introduction and Background

Like most issuers of securities, when an investment company (''fund'') offers its shares to the public, its promotional efforts become subject to the advertising restrictions of the Securities Act. Congress imposed these restrictions so that investors would base their investment decisions on the full disclosures contained in the ''statutory prospectus,'' which Congress intended to be the primary selling document.[2] The advertising restrictions of the Securities Act cause special problems for many investment companies, particularly for open-end management investment companies (''mutual funds'') and other investment companies that continuously offer and sell their shares.[3] For these funds, the advertising restrictions apply continuously because the offering process, in effect, is continuous.

In recognition of these problems, the Commission has adopted special advertising rules for investment companies. The most important of these is rule 482 under the Securities Act, which permits investment companies to advertise investment performance data, as well as other information.[4] Rule 482 advertisements are ''prospectuses'' under section 10(b) of the Securities Act (so-called ''omitting prospectuses''),[5] which means that, historically, they

[2] ''Statutory prospectus'' refers to the full prospectus required by Section 10(a) of the Securities Act. 15 U.S.C. 77j(a).

[3] An open-end management investment company (''mutual fund'') is an investment company, other than a unit investment trust or face-amount certificate company, that offers for sale or has outstanding any redeemable security of which it is the issuer. Sections 4 and 5(a)(1) of the Investment Company Act [15 U.S.C. 80a–4 and 80a–5(a)(1)]. Mutual funds typically offer and sell their shares continuously to provide an ongoing flow of capital into their portfolios and to enable them to meet redemption requests from outgoing shareholders.

A unit investment trust (''UIT'') is ''an investment company which (A) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (B) does not have a board of directors, and (C) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities; but does not include a voting trust.'' Section 4(2) of the Investment Company Act [15 U.S.C. 80a–4(2)]. UITs typically have active secondary markets in which the trusts' sponsors are continuously purchasing and selling the trusts' units.

A face-amount certificate is a security that obligates the issuer to pay a stated (or determinable) amount on a fixed (or determinable) date or series of dates more than twenty-four months after the date of issuance. Section 2(a)(15) of the Investment Company Act [15 U.S.C. 80a–2(a)(15)]. A face-amount certificate company is an investment company that engages or proposes to engage in the business of issuing certain face-amount certificates. Section 4(1) of the Investment Company Act [15 U.S.C. 80a–4(1)].

[4] 17 CFR 230.482.

[5] 15 U.S.C. 77j(b).

could only contain information the ''substance of which'' is included in the statutory prospectus.[6] In the National Securities Markets Improvement Act of 1996 (''NSMIA''), Congress amended the Investment Company Act to permit, subject to rules adopted by the Commission, the use of prospectuses under section 10(b) of the Securities Act that include information the substance of which is not included in the statutory prospectus.[7] Today, we are proposing to amend rule 482 and make other related rule and form changes to implement this legislation, which will provide funds with the ability to include more timely information in their advertisements, *e.g.,* information about current economic conditions that normally would not be included in a fund's prospectus. The proposed amendment will also permit funds to eliminate from the statutory prospectus boilerplate disclosure that clutters the statutory prospectus and obscures other important information.

At the same time, we are proposing amendments to the fund advertising rules that are intended to reinforce antifraud protections and encourage the provision of information to investors that is more balanced and informative, particularly in the area of investment performance. Many funds experienced extraordinary performance during 1999 and 2000, particularly funds investing in technology and Internet stocks.[8] Eager to attract new investors, many of these funds engaged in advertising campaigns focusing on past performance.[9] We became concerned that some funds, when advertising their performance, may resort to techniques that create unrealistic investor expectations or may mislead potential investors.

The Commission has undertaken a series of initiatives to address trends in the area of performance advertising. We have engaged in education efforts to caution investors against the dangers of chasing fund performance and focusing only on short-term asset growth.[10] Our staff has conducted a special review of fund marketing materials, as well as examinations of funds that have employed aggressive marketing practices.[11] And we have instituted enforcement actions based on misleading fund advertising.[12] Today's proposed amendments are part of our continuing efforts to raise the bar for fund performance advertising so that investors are informed, and not misled, by that advertising.

A. Fund Advertising Rules

Section 5 of the Securities Act contains prohibitions regarding the dissemination of written selling material to investors during the offering period. Section 5(b)(1) makes it unlawful to use interstate commerce to transmit any prospectus relating to a security with respect to which a registration statement has been filed unless the prospectus meets the requirements of section 10 of the Securities Act.[13] ''Prospectus'' is broadly defined in section 2(a)(10) to include any advertisement or other communication, ''written or by radio or television, which offers any security for sale or confirms the sale of any security.'' [14] Thus, advertisements are considered prospectuses under the Securities Act if they offer a security for sale. Because the term ''offer'' is defined and interpreted broadly to encompass any attempt to procure orders for a security, written and radio or television advertisements relating to a security, or aiding in the selling effort with respect to a security, generally must be in the form of a section 10 prospectus.[15]

There is a limited exception to the general requirement that written and radio or television offers after the filing of a registration statement must be in the form of a section 10 prospectus. So-called ''supplemental sales literature'' may be used after the effective date of a registration statement if accompanied or preceded by the statutory prospectus.[16] In addition, the use of ''tombstone'' advertisements is permitted under limited circumstances without prior delivery of the statutory prospectus.[17]

The advertising restrictions of the Securities Act cause special problems for many investment companies. Unlike typical corporate issuers that generally offer their shares only periodically, mutual funds typically offer and sell their shares continuously to provide an ongoing flow of capital into their portfolios and to enable them to meet redemption requests from outgoing shareholders. Unit investment trusts (''UITs'') typically have active secondary markets in which the trusts' sponsors are continuously purchasing and selling the trusts' units. For mutual funds and UITs, the advertising restrictions apply continuously because the offering process, in effect, is continuous. In recognition of this issue, the Commission has adopted special advertising rules for investment companies.

Rule 482

The Commission adopted rule 482 under the authority of section 10(b) of the Securities Act, which permits the Commission to adopt rules that provide for a prospectus that ''omits in part'' or ''summarizes'' information contained in the statutory prospectus.[18] Rule 482

[6] 17 CFR 230.482(a)(2).

[7] National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290, 110 Stat. 3416, 3428, Section 204.

[8] In 1999, for example, more than 200 funds had returns of more than 200 percent. Gavin Daly, *SEC Reviewing Performance-Based Ads* (Mar. 29, 2000) (visited June 13, 2000) http://www.ignites.com/. In particular, funds investing in technology and Internet stocks achieved unusually high returns. Humberto Cruz, *Don't Let Numbers Mislead,* Sun-Sentinel, Feb. 13, 2000, at 5F.

[9] *See* Cruz, *supra* note 8 (stating that ''[y]ou can't pick up a financial magazine these days or tune in to financial television without running into mutual fund ads like * * * 'Heavenly,' 'We're Still Celebrating,' 'With Performance Like This,' [and] 'Operators Are Standing By.' ''); Tony Lystra, *Fund Advertising Spending Jumped in 2000,* Mutual Fund Market News, Apr. 23, 2001 (''Mutual fund companies spent 22 percent more on advertising [in 2000] than in 1999 as they touted their products' improved performance in a bull market.''); Simon London, *The Managers Who Mislead Us: Controls Are Needed to Stop Absolute Performance Statistics Being Quoted Out Of Context,* The Financial Times, Mar. 11, 2000, at 6 (''[T]he strength of world equity markets over the past decade has given managers some unusually eye-catching statistics to play with.'').

[10] *See* Securities and Exchange Commission, *Mutual Fund Investing: Look at More Than a Fund's Past Performance* (last modified Jan. 24, 2000) http://www.sec.gov/investor/pubs/mfperform.htm.

[11] Securities and Exchange Commission, *Supplementary News Material: Special Review of Fund Advertising Fact Sheet* (last modified Feb. 23, 2001) http://www.sec.gov/news/extra/funadfct.htm; Paul F. Roye, Director, Division of Investment Management, ''Challenges for the Mutual Fund Industry in the Competitive Frontier,'' Remarks at the 2000 Mutual Funds and Investment Management Conference, Palm Desert, Ca. (Mar. 27, 2000) (transcript available at http://www.sec.gov/news/speech/speecharchive/200speech.shtml).

[12] For a discussion of these enforcement actions, see note 39 *infra* and accompanying text.

[13] 15 U.S.C. 77e(b)(1).

[14] 15 U.S.C. 77b(a)(10).

[15] Section 2(a)(3) of the Securities Act defines the term ''offer'' to include ''every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value.'' 15 U.S.C. 77b(a)(3).

[16] Under section 2(a)(10) of the Securities Act, supplemental sales literature is not considered to be a prospectus and, as a result, is not subject to section 5(b)(1) of the Securities Act.

[17] ''Tombstone'' advertisements are permitted by section 2(a)(10)(b) of the Securities Act, which provides that an advertisement or other communication in respect of a security shall not be deemed a prospectus: If it states from whom a written prospectus meeting the requirements of section 10 may be obtained and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed, and contain such other information as the Commission, by rules or regulations deemed necessary or appropriate in the public interest and for the protection of investors * * * may permit. 15 U.S.C. 77b(a)(10)(b).

[18] 15 U.S.C. 77j(b). *See also* Investment Company Act Release No. 10852 (Aug. 31, 1979) [44 FR 52816

Continued

permits registered investment companies and business development companies to advertise any information ''the substance of which'' is included in the statutory prospectus.[19] The theory behind the ''substance of which'' requirement is that an advertisement cannot be one that ''omits'' information from the statutory prospectus unless all of the information in the advertisement is derived from information in the statutory prospectus.[20] Significantly, rule 482 provides a means for mutual funds to advertise performance information according to standardized formulas.[21]

Because a rule 482 advertisement is a prospectus under section 10(b) of the Securities Act, a rule 482 advertisement is subject to section 12(a)(2) of the Securities Act, which imposes liability for materially false or misleading statements in a prospectus or oral communication, subject to a reasonable care defense.[22] Rule 482 advertisements are also subject to the antifraud provisions of the federal securities laws.[23] Mere compliance with the terms of rule 482 is not a safe harbor against antifraud liability.[24]

Rule 134

In contrast to rule 482, rule 134 is a content-based rule that specifies certain categories of information that a fund may advertise. The Commission adopted rule 134 under the authority of section 2(a)(10)(b) of the Securities Act.[25] Section 2(a)(10)(b) excepts a communication from the definition of ''prospectus'' if the communication states from whom an investor may obtain a written prospectus meeting the requirements of section 10 of the Securities Act and, in addition, does no more than identify the security, state its price and by whom orders will be executed, and contain any other information that the Commission permits by rule. Originally, rule 134 communications, known as ''tombstone advertisements,'' were intended merely to announce the existence of a public offering and serve as a simple means for soliciting inquiries for the statutory prospectus.[26] Over the years, however, the Commission has amended rule 134, broadening the permissible categories of information that a fund may include in its tombstone advertisements.[27] Today, funds may advertise a broad range of information under rule 134, other than performance information.

Because the Commission adopted rule 134 under section 2(a)(10)(b) of the Securities Act, rule 134 advertisements are not considered prospectuses. As a result, rule 134 advertisements do not create liability under section 12(a)(2) of the Securities Act, which by its terms applies only to prospectuses and oral communications.[28] Rule 134 advertisements, however, are subject to the antifraud provisions of the federal securities laws.[29]

Rule 34b–1

Rule 34b–1 under the Investment Company Act applies to supplemental sales literature, *i.e.,* sales literature that is preceded or accompanied by the statutory prospectus.[30] Under rule 34b–1, any performance data included in supplemental sales literature must be accompanied by performance data computed using the standardized formulas for advertising performance under rule 482.[31] The Commission adopted rule 34b–1 to ensure that performance claims in supplemental sales literature would not be misleading and to promote comparability and uniformity among supplemental sales literature and rule 482 advertisements.[32] Supplemental sales literature is subject to the antifraud provisions of the federal

(Sept. 10, 1979)] (''1979 Advertising Adopting Release'') (initially adopting rule 482 as rule 434d).

[19] Rule 482(a)(2) under the Securities Act [17 CFR 230.482(a)(2)]. Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act. *See* Section 2(a)(48) of the Investment Company Act [15 U.S.C. 80a–2(a)(48)] (defining ''business development company'').

[20] Investment Company Act Release No. 9811 (June 8, 1977) [42 FR 30379, 30380 (June 14, 1977)] (''1977 Advertising Proposing Release'') (proposing rule 434d, subsequently renumbered as rule 482).

[21] Rule 482 provides mutual funds with an opportunity to advertise, according to standardized formulas, their current yield, tax-equivalent yield, total return, and after-tax return. Mutual funds also may advertise other historical measures of fund performance, subject to certain limitations, provided that the standardized total return is also included. Rule 482(e) under the Securities Act [17 CFR 230.482(e)]. The Commission adopted the use of standardized formulas in order to permit prospective investors to compare the performance claims of competing funds and to prevent misleading performance claims by funds. Investment Company Act Release No. 16245 (Feb. 2, 1988) [53 FR 3868 (Feb. 10, 1988)] (''1988 Advertising Adopting Release'').

[22] 15 U.S.C. 77*l*(a)(2). An action under section 12(a)(2) does not require proof of scienter (*i.e.,* an intent to defraud investors), *e.g., Wigand* v. *Flo-Tek, Inc.,* 609 F.2d 1028, 1034 (2d Cir. 1979), or investor reliance on a misleading statement or omission, *e.g., MidAmerica Fed. S. & L. Assoc.* v. *Shearson/American Express, Inc.,* 886 F.2d 1249, 1256 (10th Cir. 1989); *Sanders* v. *John Nuveen & Co.,* 619 F.2d 1222, 1225 (7th Cir. 1980), *cert. denied,* 450 U.S. 1005 (1981). In contrast, claims under the antifraud provisions of section 10(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [15 U.S.C. 78j(b)] reqire proof of scienter and investor reliance. Under either type of claim, however, the plaintiff must establish that the misrepresentation or omission is material.

[23] *See, e.g.,* Section 17(a) of the Securities Act [15 U.S.C. 77q]; section 10(b) of the Exchange Act [15 U.S.C. 78j(b)]; section 34(b) of the Investment Company Act [15 U.S.C. 80a–33]; section 206 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–6] (''Investment Advisers Act'').

Members of the National Association of Securities Dealers, Inc. (''NASD'') also must comply with rule 2210 of the NASD Conduct Rules when sponsoring fund advertisements. Rule 2210 provides NASD members with general standards outlining what may constitute misleading fund advertising and specific standards reflecting requirements for advertising communications. Rules 2210(d)(1) and (2) of the NASD Conduct Rules.

[24] 1988 Advertising Adopting Release, *supra* note 21, at 3878 n. 51. *See also* Investment Company Act Release No. 24832 (Jan. 18, 2001) [66 FR 9002, 9008 (Feb. 5, 2001)] (''After-Tax Adopting Release'') (compliance with rule 482 is not a safe harbor from antifraud liability); Investment Company Act Release No. 15315 (Sept. 17, 1986) [51 FR 34384, 34391 (Sept. 26, 1986)] (''1986 Advertising Proposing Release'') (in proposing amendments to rule 482 to require the inclusion of a legend on advertisements, Commission stated that it was ''not suggesting that the legend information contains all the material information necessary to prevent an ad from being misleading * * *[and] that whoever sponsors the ad, be it the fund, the underwriter, or the dealer, bears the primary responsibility for assuring that the ad is not false or misleading''); 1977 Advertising Proposing Release, *supra* note 20, at 30380 (advertisements made pursuant to rule 434d (subsequently renumbered as rule 482) would be subject to the antifraud provisions of the securities laws); *In the Matter of The Dreyfus Corporation and Michael L. Schonberg,* Investment Advisers Act Release No. 1870 (May 10, 2000) (''Dreyfus Order'') (advertisements that comply with rule 482 are subject to the general antifraud provisions of the securities laws).

[25] 15 U.S.C. 77b(a)(10)(b).

[26] *See* Division of Investment Management, Securities and Exchange Commission, Protecting Investors Study: A Half Century of Investment Company Regulation (1992) (''Protecting Investors Study'') at 358. *See also* T. Lemke, G. Lins, A. Smith III, Regulation of Investment Companies, Vol. 1, ch. 14, § 14.02, at 14–3 (2001).

[27] *See* Securities Act Release No. 5250 (May 9, 1972) [37 FR 10071 (May 19, 1972)] (permitting tombstone advertisement to include general description of mutual fund); Investment Company Act Release No. 8568 (Nov. 4, 1974) [39 FR 39868 (Nov. 12, 1974)] (permitting tombstone advertisement to include description of certain special attributes of mutual fund, *e.g.,* discussion of a fund's investment objectives); Investment Company Act Release No. 8824 (June 16, 1975) [40 FR 27442 (June 30, 1975)] (extending the expanded tombstone advertising contents to UITs and permitting certain kinds of pictorial illustrations, such as logos, to be used in investment company tombstone advertising).

[28] *See supra* note 22 and accompanying text (discussing liability under section 12(a)(2) of the Securities Act).

[29] *See supra* note 23 (noting various antifraud provisions under the federal securities laws).

[30] 17 CFR 270.34b–1. Under section 2(a)(10)(a) of the Securities Act [15 U.S.C. 77b(a)(10)(a)], a communication sent or given after the effective date of the registration statement is not deemed a ''prospectus'' if it is proved that prior to or at the same time with such communication a written statutory prospectus was sent or given to the person to whom the communication was made.

[31] Rule 34b–1 applies to supplemental sales literature that is required to be filed with the Commission under section 24(b) of the Investment Company Act [15 U.S.C. 80a–24(b)], *i.e.,* supplemental sales literature of registered open-end companies, unit investment trusts, and face-amount certificate companies.

[32] 1986 Advertising Proposing Release, *supra* note 24, at 34393.

securities laws. Mere compliance with the terms of rule 34b–1 is not a safe harbor against antifraud liability.[33]

Rule 156

Rule 156 under the Securities Act provides guidance on the types of information that could be misleading in fund sales literature.[34] It applies to all advertisements and supplemental sales literature.[35] Under rule 156, whether a statement involving a material fact is misleading depends on an evaluation of the context in which it is made. Rule 156 indicates that representations about past performance could be misleading in situations where portrayals of past performance convey an impression of net investment results that would not be justified under the circumstances.[36]

B. Performance Advertising Practices

Although there are many factors other than performance that an investor should consider in deciding whether to invest in a particular fund, many investors consider performance to be one of the most significant factors when selecting or evaluating mutual funds.[37] Eager to attract new investors, many funds have, from time to time, engaged in advertising campaigns focusing on past performance. As a result of advertising that focused on extraordinary fund performance during 1999–2000, there have been increasing concerns that some funds, when advertising their performance, may resort to techniques that create unrealistic investor expectations or may mislead potential investors.[38] As discussed more fully below, we have particular concerns about the following practices:

- Advertising performance without providing adequate disclosure of unusual circumstances that have contributed to performance;
- Advertising performance without providing adequate disclosure of the performance period, that more current performance information is available, or that more current performance may be lower than advertised performance; and
- Advertising performance based on selective dates or time periods in order to showcase fund performance as of those specific dates or time periods without providing disclosure that would permit an investor to evaluate the significance of the performance.

Unusual Circumstances That Contribute to Fund Performance

Mutual fund performance advertisements may be materially misleading when they fail to adequately disclose that unusual circumstances contributed to the fund's advertised performance. In each of two enforcement actions, an investment adviser had marketed a relatively small fund's unusually high return without disclosing that a significant percentage of the fund's return was attributable to its investments in securities issued in initial public offerings.[39] Given the substantial growth in the funds' assets as a result of sales of the funds' shares to the public, to the point where the funds were no longer experiencing, by investing in additional initial public offerings, substantially similar performance as they previously experienced, the Commission found that the failure to disclose the contribution to the funds' performance of the initial public offering investments was materially misleading.

To address these concerns, some mutual fund advertisements supplement their presentations of performance information with narrative disclosure that is designed to inform investors that the funds' performance was achieved through the use of particular investment strategies under specified circumstances that are not likely to recur. For example, one fund advertisement disclosed that a significant portion of the fund's advertised performance was attributable to the allocation of initial public offering securities to the fund but indicated that such allocation would not likely continue in the future.

Currentness of Performance Information

Rule 482 requires all performance data contained in any mutual fund advertisement to be as of the most recent practicable date, provided that any advertisement containing total return quotations is considered to have complied with this requirement if the total return quotations are current to the most recent calendar quarter ended prior to submission of the advertisement for publication.[40] As a result, total return quotations may be up to three months old at the time that an advertisement is submitted for publication. We are concerned that, in some cases, an advertisement that complies with these requirements of rule 482 may nonetheless confuse, or even mislead, investors regarding the fund's current performance, particularly when the fund's performance has declined significantly after the period reflected in an advertisement.

We questioned this practice in an enforcement action where we found that the failure to disclose the large impact of initial public offerings on a fund's performance during the fund's first fiscal year made the fund's performance advertisements materially false and misleading.[41] One of the significant facts in that case was that the fund's advertisements publicized extraordinary first-year returns at a time when the fund's more current returns had become negative.[42] While the fund advertisements complied with rule 482, we noted that rule 482 advertisements remain ''subject to the general antifraud

[33] After-Tax Adopting Release, *supra* note 24, at 9008.

[34] 17 CFR 230.156.

[35] 17 CFR 230.156(c).

[36] 17 CFR 230.156(b)(2)(i). *See* Investment Company Act Release No. 10915 (Oct. 26, 1979) [44 FR 64070 (Nov. 6, 1979)] (adopting rule 156).

[37] *See* Investment Company Institute, *Understanding Shareholders' Use of Information and Advisers* (Spring 1997), at 21 and 24 (Total return information was frequently considered by investors before a purchase, second only to the level of risk of the fund. Eighty-eight percent of fund investors surveyed said that they considered total return before their most recent purchase of a mutual fund. Eighty percent of fund owners surveyed reported that they followed a fund's rate of return at least four times per year.). *See also* Securities and Exchange Commission, *Mutual Fund Investing: Look at More Than a Fund's Past Performance, supra* note 10 (cautioning investors to consider factors other than performance, such as fees, risks, volatility, and recent changes in the fund's operations, when evaluating mutual funds).

[38] Paul F. Roye, Director, Division of Investment Management, ''Success and Survival of the Mutual Fund Industry in a Changing World,'' Remarks before the ICI General Membership Meeting, Washington, DC (May 19, 2000) (discussing Commission concerns with fund advertising). (transcript available at http://www.sec.gov/news/speech/spch373.htm).

See also NASD Regulation, Inc. (''NASDR''), *Inaccurate Performance Graphs Result In Formal Action* (last modified Summer 2000) http://www.nasdr.com/rca_summer00_adv.htm (warning against misleading performance graphs in fund advertising); NASD Notice to Membes No. 00–21 (Apr. 2000) (''NASD Notice 00–21'') (advising members to be careful when advertising extraordinary fund performance because prospective investors may believe that these unusually high returns will continue and warning that material disclosures, which may balance an advertisement's overall message, should not be relegated to footnotes).

[39] Dreyfus Order, *supra* note 24 (investment adviser violated antifraud prohibitions of section 206(2) of the Investment Advisers Act [15 U.S.C. 80b–6(2)] and section 17(a)(3) of the Securities Act [15 U.S.C. 77q(a)(3)]); *In the Matter of Van Kampen Investment Advisory Corp. and Alan Sachtleben,* Investment Advisers Act Release No. 1819 (Sept. 8, 1999) (investment adviser violated antifraud prohibitions of section 206(2) of the Investment Advisers Act [15 U.S.C. 80b–6(2)] and section 34(b) of the Investment Company Act [15 U.S.C. 80a–33(b)]).

[40] Rule 482(g) under the Securities Act [17 CFR 230.482(g)].

[41] *See* Dreyfus Order, *supra* note 24.

[42] *Id.* (81.92% total return for the one-year period ended September 30, 1996, publicized in October through December 1996 when total returns for the three-month periods ended August 30, September 30, October 31, November 29, and December 31, 1996, were negative 17.03%, 7.71%, 7.79%, 16.25%, and 13.37%, respectively).

provisions of the federal securities laws and must not be false and misleading.''[43]

To address this concern, some mutual fund advertisements supplement their presentations of performance information with narrative disclosure that is designed to inform investors that the advertised performance is not the fund's current performance. Some advertisements disclose that, due to market volatility or other factors, the fund's performance changes over time or that the fund's current performance may be lower than the advertised performance. Other advertisements direct investors to other sources where they may find more up-to-date performance information, such as the fund's toll-free telephone number or website or the mutual fund section of the newspaper in which the advertisements appear. In addition, some advertisements include performance information that is more current than the information required by rule 482.

Selective Use of Performance Figures

A mutual fund advertisement may be materially misleading when it showcases a fund's performance for a certain time period without providing sufficient information to permit an investor to evaluate the significance of the performance data. Rule 482, by its terms, permits a mutual fund to advertise its performance for any period so long as it is accompanied by performance for 1-, 5-, and 10-year periods (or, if shorter, for the life of the fund) current to the most recent quarter.[44] Nonetheless, if a fund selectively advertises performance that is unusually high and not representative of the fund's historical performance, investors potentially may be misled. Selectively advertising performance as of a particular date may be particularly problematic where performance has declined after the chosen date but before the advertisement is submitted for publication. To address these concerns, some mutual fund advertisements supplement their performance presentations with narrative disclosure to the effect that the fund's performance may be volatile, that the performance information shown is not current, or that the advertised performance is not representative of the fund's historical performance.

II. Discussion

We are proposing to amend rule 482 to permit rule 482 advertisements to include information that is not included in the statutory prospectus, in accordance with NSMIA. In light of the proposed amendments to rule 482, we are also proposing to rescind the provisions in rule 134 that apply to funds. At the same time, however, and in light of our concerns about fund advertising practices, we believe that it is appropriate to reinforce the antifraud protections in the fund advertising rules. Our proposals would require enhanced disclosure of information in fund advertisements and are designed to encourage advertisements that convey balanced information to prospective investors.

A. Eliminating the ''Substance of Which'' Requirement From Rule 482 and Rescinding Rule 134 for Funds

In 1992, the Division of Investment Management recommended to the Commission that the Securities Act be amended to permit investment companies to advertise a wide range of information in the form of an ''advertising prospectus,'' including information that is not included in the statutory prospectus required by section 10(a).[45] Congress embraced this recommendation in NSMIA when it added new section 24(g) to the Investment Company Act. Section 24(g) directs the Commission to adopt rules or regulations that permit registered investment companies to use prospectuses that (i) include information the substance of which is not included in the statutory prospectus, and (ii) are deemed to be permitted by section 10(b) of the Securities Act.[46]

Today we are proposing to implement this provision of NSMIA by amending rule 482 to remove the requirement that a rule 482 advertisement contain only information the ''substance of which'' is included in the statutory prospectus.[47] Eliminating this requirement will permit investment companies to include more information in rule 482 advertisements on a real-time basis, *e.g.*, information about current economic conditions that normally would not be included in a fund's prospectus. The proposed amendment will also permit funds to eliminate from the statutory prospectus information, such as boilerplate disclosure about the methods used to calculate performance in fund advertising, that clutters the statutory prospectus and obscures other important information. As a result, investors should receive better, more understandable, and more timely information in both the statutory prospectus and fund advertisements. In addition, the costs of regulatory compliance will be reduced for funds and, ultimately, for investors.

Elimination of the ''substance of which'' requirement from rule 482 should not diminish investor protection. The ''substance of which'' requirement is a technical requirement that does not, in itself, prevent misleading statements because it does not require an advertisement to use the same words as the statutory prospectus or prohibit the use of advertising techniques that are not included in the statutory prospectus.[48] Importantly, rule 482 advertisements, as ''prospectuses,'' will remain subject to section 12(a)(2) liability and the antifraud provisions of the federal securities laws. Also, rule 482 advertisements, as section 10(b) prospectuses under the Securities Act, are subject to the summary suspension provisions of section 10(b), which permit the Commission to suspend the use of a materially false or misleading prospectus.[49] In addition, fund advertising materials must continue to be filed with NASD Regulation, Inc. (''NASDR'') or the Commission, and NASDR rules relating to fund advertising will continue to apply.[50]

---

[43] *Id.* at n. 16. Similarly, NASDR warned its members about performance advertising when a security's performance has been negatively affected by sudden changes in market conditions. NASDR advised its members ''that if a security experiences an abrupt negative change in performance, member firms should amend their historical performance communications to add either updated performance figures or clear disclosure that current performance is less than the figures shown.'' NASD Regulation, Inc., *Sudden Performance Changes May Require More Information* (last modified Summer 1999) http://www.nasdr.com/3085_9906. htm.

[44] Rule 482(e)(5)(ii) [17 CFR 230.482(e)(5)(ii)].

[45] Protecting Investors Study, *supra* note, at 370.

[46] 15 U.S.C. 80a–24(g). *See also* S. REP. NO. 293, 104th Cong., 2d Sess. 8 (1996) (stating that the ''bill improves fund advertising by giving the Commission express authority to create a new investment company 'advertising prospectus' '').

[47] The ''substance of which'' requirement is presently contained in rule 482(a)(2) [17 CFR 230.482(a)(2)]. We are also proposing to revise the language in the current note to paragraph (a)(3) of rule 482, which states that ''[t]he fact that the statements included in the advertisement are included in the section 10(a) prospectus does not relieve the issuer, underwriter, or dealer of the obligation to ensure that the advertisement is not false or misleading.'' The proposed removal of the ''substance of which'' requirement makes the reference to the section 10(a) prospectus unnecessary. The revised language of this note is incorporated into the proposed note to proposed paragraph (a) of rule 482. *See* Section II.B., *infra*, ''Applicability of Antifraud Provisions to Fund Advertising.''

[48] *See* 1977 Advertising Proposing Release, *supra* note 20, at 30380.

[49] 15 U.S.C. 77j(b).

[50] Section 24(b) of the Investment Company Act [15 U.S.C. 80a–24(b)] requires the filing with the Commission of ''any advertisement, pamphlet, circular, form letter, or other sales literature'' for any registered investment company other than a closed-end fund. Rule 24b–3 under the Investment

Finally, we are today proposing additional amendments to rule 482 to reinforce antifraud protections, particularly in the area of fund performance.[51]

We are using our exemptive authority under the Securities Act to eliminate the ''substance of which'' requirement from rule 482 for the securities of business development companies (''BDCs'') as well as registered investment companies.[52] Currently, BDCs and registered investment companies are treated similarly under rule 482. We believe that it is appropriate to extend the benefits that would result from elimination of the ''substance of which'' requirement to BDCs, given that elimination of this requirement should not diminish investor protection. We note, however, that BDCs, unlike mutual funds, do not continuously offer and sell their shares and do not make extensive use of advertisements.

We request comment on the elimination of the ''substance of which'' requirement from rule 482.

- Are the proposed amendments to rule 482 to eliminate the ''substance of which'' requirement the appropriate means for implementing the authority provided to the Commission in NSMIA?
- Are other restrictions or conditions necessary in rule 482 for the protection of investors in the absence of the ''substance of which'' requirement?
- What concerns should be addressed by any such restrictions or conditions?
- Should the ''substance of which'' requirement be eliminated for BDCs?

With the proposed elimination of the ''substance of which'' requirement, we believe that funds will no longer need to rely on rule 134.[53] We are therefore proposing to remove the provisions of rule 134 that apply specifically to funds and to exclude both registered investment companies and business development companies from relying on rule 134. Rule 134 will remain available to other issuers. Rule 482, as we propose to amend it, will provide funds with sufficient flexibility to discuss topics, such as current economic conditions, that are currently discussed in rule 134 advertisements but generally not in the statutory prospectus. We believe that investor protection will be increased if fund advertisements including this information are subject to rule 482 and, as a result, to section 12(a)(2) liability.[54]

We request comment on the elimination of the rule 134 provisions that apply to funds.

- Should funds be excluded from relying on rule 134?
- If funds should continue to be permitted to rely on rule 134, how, if at all, should rule 134 be amended?
- In the alternative, should only certain types of funds (*e.g.,* closed-end funds or business development companies) be able to use rule 134 advertisements? If so, why?

B. Applicability of Antifraud Provisions to Fund Advertising

The Commission proposes to amend the fund advertising rules in order to reemphasize that fund advertisements are subject to the antifraud provisions of the federal securities laws. We understand that questions have been raised regarding whether compliance with the terms of rule 482 satisfies all of the obligations of a fund with respect to its advertisements.[55] When we initially proposed rule 482 in 1977, we indicated that rule 482 advertisements would be subject to section 12(a)(2) of the Securities Act and the antifraud provisions of the federal securities laws.[56] Since then, we have reiterated that compliance with the ''four corners'' of rule 482 does not alter the fact that funds, underwriters, and dealers are subject to the antifraud provisions of the federal securities laws with respect to fund advertisements.[57]

To emphasize this principle, we propose adding a note to proposed paragraph (a) of rule 482 that would state that an advertisement that complies with rule 482 does not relieve the fund, underwriter, or dealer of the obligation to ensure that the advertisement is not false or misleading. We also propose adding a similar note to the introductory paragraph of rule 34b–1 under the Investment Company Act with respect to supplemental sales literature. We are proposing to add the note to rule 34b–1 to make clear that, as with rule 482, compliance with the rule does not relieve the fund, or its underwriter or dealer, from the obligation to ensure that an advertisement is not false or misleading, whether due to an affirmative misstatement or omission. These proposed notes also would cross-reference rule 156 under the Securities Act, which provides guidance about the factors to be weighed in determining whether statements, representations, illustrations, and descriptions contained in fund advertisements and sales literature are misleading.

In addition, we are proposing to amend rule 156 to provide further guidance regarding the factors to be weighed in considering whether a statement involving a material fact in investment company sales materials is or might be misleading. As discussed above, we are concerned that the advertisement of past performance without an adequate explanation of other facts may create unrealistic investor expectations or even mislead potential investors. For that reason, we are modifying the language of rule 156 to state more explicitly that portrayals of past income, gain, or growth of assets may be misleading where the portrayals omit explanations, qualifications, limitations, or other statements necessary or appropriate to make these portrayals of past performance not misleading.[58] This language is intended to address our concerns with fund performance advertisements that do not provide adequate disclosure (i) of unusual circumstances that have contributed to fund performance;[59] (ii) that more current performance may be lower than advertised performance;[60] or

Company Act [17 CFR 270.24b–3] relieves funds of the obligation to file advertisements and other sales materials with the Commission if that material is filed with NASDR. *See supra* note 23 (discussion of NASD advertising rules).

[51] See discussion in Section II.B., ''Applicability of Antifraud Provisions to Fund Advertising,'' and Section II.C., ''Enhanced Disclosure under Rule 482,'' *infra.*

[52] Section 28 of the Securities Act [15 U.S.C. 77z–3]. Business development companies are a category of closed-end investment companies that are not required to register under the Investment Company Act. *See* Section 2(a)(48) of the Investment Company Act [15 U.S.C. 80a–2(a)(48)] (defining ''business development company'').

[53] The Protecting Investors Study recommended rescinding the provisions of rule 134 applicable solely to funds. Protecting Investors Study, *supra* note 26, at 363.

[54] Rule 134 advertisements are subject to the antifraud provisions under the federal securities laws but do not create liability under section 12(a)(2) of the Securities Act. *See supra* note 22 and accompanying text (discussing section 12(a)(2) liability) and note 28 and accompanying text (discussing rule 134 advertisements and section 12(a)(2)).

[55] *See, e.g.*, Bloomberg News, *SEC Reviewing Funds Ads That May Mislead*, Los Angeles Times, July 13, 1999, at C5 (stating that the Commission's position that advertisements complying with the four corners of rule 482 may still be misleading under the federal securities laws ''has drawn criticism from the fund sector'').

[56] 1977 Advertising Proposing Release, *supra note* 20, at 30380.

[57] 1988 Advertising Adopting Release, *supra* note 21 at 3878 n. 51. See also discussion in note 24, *supra.*

[58] Proposed rule 156(b)(2)(i). Currently, rule 156 states that portrayals of past performance may be deemed misleading if they convey an impression about the investment results that would not be justified under the circumstances. Rule 156(b)(2)(i) under the Securities Act [17 CFR 230.156(b)(2)(i)].

[59] *See supra* 39 note and accompanying text (discussing Commission enforcement cases sanctioning fund advisers for lack of disclosure regarding the impact of investments in initial public offerings on advertised performance).

[60] *See supra* notes 40–43 and accompanying text (discussing concerns that advertisements that comply with rule 482 may nonetheless mislead investors regarding the fund's current performance).

(iii) that would permit an investor to evaluate the significance of performance that is based on selective dates.[61] We remind funds and their underwriters and dealers, however, that this language would address other circumstances that we have not specifically enumerated and that each fund, and its underwriters and dealers, is responsible for analyzing the facts and circumstances concerning its advertisements and determining whether its advertisements may be fraudulent.

We request comment on the proposed amendments reemphasizing the applicability of the antifraud provisions.

• Are there additional amendments to rule 482, rule 34b–1, and rule 156 that would help to emphasize the obligations under the antifraud provisions of funds and their underwriters and dealers?

C. Enhanced Disclosure Under Rule 482

We are also proposing additional amendments to rule 482 that would require enhanced disclosure of certain information designed to encourage advertisements that convey balanced information to prospective investors. Our proposed amendments would require that funds that advertise performance information make available to investors total returns that are current to the most recent month-end. They also would require that fund advertisements include improved narrative information and present explanatory information more prominently.

Availability of Month-End Performance Information

As discussed above, Rule 482 requires all performance data contained in any mutual fund advertisement to be as of the most recent practicable date, provided that any advertisement containing total return quotations is considered to have complied with the requirement if the total return quotations are current to the most recent calendar quarter ended prior to submission of the advertisement for publication.[62] As a result, total return quotations may be up to three months old at the time that an advertisement is submitted for publication. We are concerned that, in some cases, an advertisement that complies with these requirements of rule 482 may nonetheless confuse, or even mislead, investors, particularly when performance has declined significantly after the period reflected in an advertisement.

In order to address this concern, we are proposing to add a second condition for a fund advertisement to be considered to have complied with the requirement of rule 482 that performance be as of the most recent practicable date. Specifically, total return quotations current to the most recent month-end, and available to investors within three calendar days of the most recent month-end, must be provided at a toll-free (or collect) telephone number.[63]

This proposal would ensure that investors who are provided advertisements touting a fund's performance will have ready access to performance that is current to the most recent month-end and will not be forced to rely on performance data that may be more than three months old at the time of use by the investor. Outdated fund performance that is relied on by an investor when, for example, the markets have generally entered a period of lower performance, may cause the investor to have an overly optimistic view of the fund's ability to outperform the markets. We believe that today's proposal will help to address this problem by making more recent performance data available to investors in any fund that advertises its performance.

We note that the proposed amendments would require the availability of month-end performance information even if the advertisement itself included performance current as of the most recent month-end at the time of submission for publication. The availability of month-end information would be useful to investors in these circumstances if, for example, the advertisement continued to be used subsequent to the end of the following month, or if the investor referred to the advertisement at a later date.

Finally, we note that the availability of month-end information by telephone does not alter the application of the antifraud provisions to an advertisement. The month-end information obtained through a telephone call would not be considered part of the advertisement itself.

We considered amending the requirements of rule 482 to provide that an advertisement would be considered to have complied with the ''most recent practicable date'' requirement if the total return quotations are current to the most recent calendar month ended prior to submission of the advertisement for publication. This approach would have the advantage of providing more current performance information to investors in advertisements rather than placing the burden on investors to seek out this information through a telephone call. We were not, however, persuaded that the benefits to investors from this approach would outweigh the costs it would impose.

First, a month-end standard for rule 482 performance data could result in an increase in the number of instances in which performance information for different periods appeared concurrently as a result of different lead times for different publications. One advantage of the quarter-end approach is that it tends to result in the publication of comparable numbers by different funds. Second, requiring all funds to publish data as of the most recent month-end in all cases, without regard to the materiality of this information, would perhaps accord very recent performance greater status than it deserves and could contribute to investors' tendency to focus excessively on short-term performance.[64]

A month-end standard would also impose costs on funds and, indirectly, on investors. While a month-end standard might be fairly simple to comply with for advertisements in some publications (*e.g.,* newspapers), it might be difficult for other forms of advertisement. For example, mutual fund distributors frequently supply sales material in bulk to third-party intermediaries, such as broker-dealers, and to retirement plan sponsors, who then distribute it to investors. If month-end numbers were required, the ''shelf life'' of this material would be abbreviated, which could result in significant additional printing and compliance costs associated with preparing updated material and providing it to all distribution channels.

We also considered whether to provide funds greater flexibility in determining the medium through which to make month-end numbers available, so that a fund could, for example, meet this obligation through website access. We concluded that, at this time, requiring telephone availability would ensure the most widespread access to this information by all investors. While the percentage of households with Internet access has increased considerably in recent years, it remains

[61] *See supra* 44 note and accompanying text (discussing concerns about selective advertisement of performance that is unusually high and not representative of a fund's historical performance).

[62] Rule 482(g) under the Securities Act [17 CFR 230.482(g)].

[63] Proposed paragraph (g)(2) of rule 482. Our understanding is that funds typically calculate performance daily so that making month-end performance numbers available within three calendar days of the most recent month-end should not be burdensome.

[64] *See* Securities and Exchange Commission, *Mutual Fund Investing: Look at More Than a Fund's Past Performance, supra* note (cautioning investors to look beyond short-term performance records).

substantially lower than the percentage with access to telephones.[65] We note, however, that we have taken steps to encourage issuers and market intermediaries to communicate with and deliver information to investors through the Internet.[66] The increased availability of information through this medium has helped to promote transparency, liquidity, and efficiency by making information available to investors quickly and in a cost-effective manner. We encourage each fund to make its month-end performance information available to its investors on its website, if it has one. We applaud the efforts already being made by many funds to provide access to performance and other information, such as prospectuses, cost information, and portfolio holdings, through their websites. We encourage other funds to make similar efforts.

We also note that nothing in rule 482 or our proposed amendments would preclude a fund from using (and disclosing in a rule 482 advertisement) other methods for providing updated performance information, such as broker-dealers, investment advisers, and other financial intermediaries. We would encourage funds to use any means to make this information more accessible. Our proposals reflect our view, however, that updated performance information should be available from the fund itself through a telephone call to an identified number and that other forms of distribution of this updated information should supplement availability from the fund itself.

We request comment on the proposed requirement that funds make available month-end performance numbers through a toll-free (or collect) telephone number in order to comply with the currentness requirements of rule 482.

- Is our proposed requirement appropriate, or should we, instead, require funds to provide more current performance information in all advertisements? If so, how current should the information be, *e.g.,* month-end, week-end, or some other period?
- Should we require funds to provide more current performance information in certain types of publications, *e.g.,* websites or newspapers and other publications where there is a short lead time between submission and publication and a short shelf life? If so, how current should the performance information be, *e.g.,* month-end, week-end, or some other period? To what types of publications should this requirement apply?
- If we require funds to provide more current performance information through a toll-free telephone number or other means, is month-end data current enough or should this information be updated more frequently than monthly (*e.g.,* weekly or daily)?
- Should we require month-end performance data to be available at a toll-free (or collect) telephone number where the advertisement itself includes performance data current to the most recent month ended prior to submission of the advertisement for publication?
- Should we require that updated performance information available through a telephone number be current as of the most recent practicable date (rather than specifying a particular date, such as month-end), and, if so, should we provide guidance regarding what would satisfy that requirement (*e.g.,* month-end data)?
- Is three calendar days an appropriate period of time after each month-end in which to require funds to make available month-end performance information on a telephone line? If not, should funds be allowed more or less time, and, if so, how much time is needed, *e.g.,* 1 day, 5 days, or some other amount of time? Should the time period be based on calendar days or business days?
- Is telephone access to updated performance information the best alternative, or is another alternative, such as website access, better?
- Should funds have flexibility to choose the medium for communicating updated performance information?
- What would be the cost of requiring access to month-end performance information by toll-free telephone number for funds that do not currently provide this access?
- A number of daily newspapers of national circulation, such as *The Wall Street Journal* and *The New York Times,* publish returns for a significant number of mutual funds on a daily basis.[67] Should funds that advertise performance information, and for which daily performance information is available in the press, be required to refer to the availability of the daily information in their performance advertisements?

Improved Narrative Disclosure

As discussed above, there have been increasing concerns, arising from the period of extraordinary market performance in 1999 and 2000, that some funds, when advertising their performance, may resort to techniques that create unrealistic investor expectations or may mislead potential investors. As a result, we are proposing changes to the narrative disclosure that is required to accompany performance advertisements in order to help investors understand the limitations of past performance data and enhance the ability of investors to obtain updated performance information. At present, rule 482 requires advertisements to disclose (i) a source from which an investor may obtain a prospectus containing more complete information about the fund; (ii) that the performance data quoted represents past performance; and (iii) in the case of a non-money market fund, that the investment return and principal value of an investment will fluctuate so that an investor's shares, when redeemed, may be worth more or less than their original cost.[68] Our proposed amendments would also require funds to include the following information in rule 482 advertisements that contain performance figures: (i) A statement that past performance does not guarantee future results; (ii) a statement that current performance may be lower or higher than the performance data quoted; and (iii) a fund toll-free (or collect) telephone number and, if available, a Web site where an investor

[65] Economics and Statistics Administration & National Telecommunications and Information Administration, *A Nation Online: How Americans Are Expanding Their Use of the Internet,* at 3 (Feb. 2002) (50.5% of households had Internet access as of Sept. 2001); Federal Communications Commission, *Telephone Subscribership In the United States,* at 1 (Feb. 2002) (95.1% of households had telephone service as of July 2001).

[66] *See, e.g.,* Securities Act Release No. 8089 (April 12, 2002) [67 FR 19896, 19902 (April 23, 2002)] (proposing to require companies to include disclosure in their annual reports on Form 10–K about the availability on company websites of reports on Forms 10–K, 10–Q, and 8–K).

[67] *See* NASD Manual § 6800 (CCH) at 6551 (March 2001) (describing Mutual Fund Quotation Service which disseminates prices for mutual funds). A mutual fund may choose to be included in the news media list released by The NASDAQ Stock Market through the Mutual Fund Quotation Service if it has at least 1,000 shareholders or $25 million in net assets. *Id.* at § 6800(c)(1)(A).

[68] Rule 482(a)(3)(i) and (6) [17 CFR 230.482(a)(3)(i) and (6)]. Rule 482(a)(3)(ii) [17 CFR 230.482(a)(3)(ii)] requires that an advertisement used with a profile under rule 498 under the Securities Act [17 CFR 230.498] indicate that information is available in the profile about the fund, the procedures for investing in the fund, and the availability of the fund's prospectus. In addition, rule 482(a)(4) requires the ''subject to completion'' legend required by rule 481(b)(2) under the Securities Act if the advertisement is used prior to effectiveness of the fund's registration statement, or, in the case of a registration statement that becomes effective omitting certain information from the prospectus contained in the registration statement in reliance upon rule 430A, when the advertisement is used prior to determination of the public offering price. Rule 481(b)(2); rule 430A [17 CFR 430.481(b)(2); 430.430A].

may obtain performance data current to the most recent month-end.[69]

These statements should help investors to understand the limitations of past performance presentations, namely, that they represent historical information that may not repeat in the future and may even be somewhat outdated at the time an investor is reviewing them. In addition, provision of a toll-free (or collect) telephone number and, if the fund has month-end performance information available on its Web site, the Web site where an investor may obtain performance data current to the most recent month-end will provide investors ready access to a fund's more current performance.

We are also proposing an amendment to rule 482 that would direct prospective investors' attention to a fund's charges and expenses. The proposed amendment would require a fund to note in its rule 482 advertisements that information about charges and expenses is contained in the statutory prospectus.[70] The many fund advertisements highlighting fund performance have focused investor attention on fund returns.[71] Investors, however, may be overlooking other important fund features, particularly charges and expenses, that may diminish a fund's return.[72]

Mutual fund fees and expenses are extremely important to shareholders. The United States General Accounting Office (''GAO''), in a recent report to Congress on mutual fund fees, stressed the importance of heightening ''investors'' awareness and understanding of the fees they pay.''[73] We believe that the amendment we are proposing today, which will ensure that fund advertisements remind fund shareholders about the availability of information about fund charges and expenses, will help to address the GAO's concerns. Although rule 482 already requires that fund advertisements that contain performance data include standardized performance information net of fees and charges,[74] we agree with the GAO that the level of charges and expenses of a mutual fund is an independent factor that should be given serious consideration by a mutual fund investor.

We request comment on the proposed requirement for disclosure about charges and expenses.

- Will the proposed disclosure about charges and expenses be helpful to investors?
- Is there other disclosure with respect to charges and expenses that should be required in fund advertisements? Are there fund features, in addition to charges and expenses, that a rule 482 advertisement should highlight?

Presentation of Explanatory Information

We are also proposing that funds present certain information in their rule 482 advertisements more prominently. Funds often present required disclosure in small print and relegate it to a footnote at the bottom of a print advertisement or the end of a television advertisement.[75] At present, rule 482 requires that the statement regarding the availability of the prospectus be ''conspicuous'' and that quotations of standardized performance be given no less prominence than other performance quotations.[76] In addition, rule 482 print advertisements are required by rule 420(a) under the Securities Act to be in roman type at least as large and as legible as 8-point modern type.[77] Under rule 420(b), rule 482 advertisements distributed through an electronic medium may satisfy legibility requirements applicable to printed documents by presenting all required information in a format readily communicated to investors, and, where indicated, in a manner reasonably calculated to draw investor attention to specific information.[78]

The proposed amendments would require print advertisements to present required narrative disclosures in a size type at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisement.[79] This requirement would apply to the required narrative disclosures about the prospectus and the performance data.[80] A radio or television advertisement would be required to give the required narrative disclosures emphasis equal to that used

---

[69] Proposed paragraph (b)(3)(i) of rule 482. *Cf.* NASD Conduct Rule 2210(d)(2)(N) (investment performance illustrations may not imply that gain or income realized in the past will be repeated in the future); NASD Conduct Rule IM–2210–3(c)(4) (all advertisements and sales literature containing an investment company ranking must disclose that past performance is no guarantee of future results).

[70] Proposed paragraph (b)(1)(i) of rule 482. This disclosure would also be required in an advertisement used with a profile pursuant to rule 498 under the Securities Act. Proposed paragraph (b)(1)(ii) of rule 482. Rule 482 currently does not require funds to highlight the availability of information regarding the fund's charges and expenses. The rule does, however, require an advertisement to identify a source from which an investor may obtain a prospectus containing more complete information about the fund. Rule 482(a)(3)(i) [17 CFR 230.482(a)(3)(i)]. The rule also requires that a fund that advertises performance data include some information about sales loads and other nonrecurring fees. Rule 482(a)(6) [17 CFR 230.482(a)(6)].

[71] *See supra* note 37 and accompanying text (discussing concerns about advertising campaigns focused on past performance).

[72] *See* Securities and Exchange Commission, *Mutual Fund Investing: Look at More Than a Fund's Past Performance, supra* note 37 (cautioning investors to look beyond performance when evaluating funds and to consider the costs relating to a fund investment). *See also* NASD Notice to Members No. 98–107 (1998) (reminding members of their obligation to ensure that discussions concerning fees and expenses in fund advertising are fair, balanced, and not misleading).

[73] United States General Accounting Office, *Mutual Fund Fees: Additional Disclosure Could Encourage Price Competition* at 97 (June 2000).

[74] Rule 482 requires that funds base standardized performance calculations on the methods prescribed in Forms N–1A, N–3, or N–4. Rule 482(d)(1), (e)(1)(i), (e)(2)(i), (e)(3)(i), and (e)(4)(i) [17 CFR 230.482(d)(1), (e)(1)(i), (e)(2)(i), (e)(3)(i), and (e)(4)(i)]. These forms generally require the deduction of all recurring fees and maximum sales loads and charges deducted from payments in calculating standardized performance. Item 21(b)(1), (2), and (3) of Form N–1A; Item 25(b)(i) of Form N–3; Item 21(b)(i) of Form N–4.

[75] *See* Adam Shell, Investors' Business Daily, Feb. 3, 2000, at B1 (stating that the placement of serious warnings in ''mice type'' is a disservice to investors); Cruz, *supra* note 8 (stating that fund advertising often prints extraordinary fund return in bold-faced type but then discloses risk factor language in ''the fine print at the bottom of the ad''); Marcy Gordon, *Securities Regulators Look at Mutual Fund Sales Pitches,* The Austin American-Statesman, Feb. 18, 2000, at D2 (citing how the Commission has decried the ''recent proliferation of ads by mutual fund companies boasting of triple-digit returns * * * [when] only the fine print in the ads explains why the performance was so strong''). *Cf.* In the Matter of LBS Capital Management, Inc., Investment Advisers Act Release No. 1644 (Jul. 18, 1997) (disclosure in footnote that advertised results of investment adviser were ''pro forma'' was inadequate to dispel misleading suggestion that advertised performance represented results of actual trading).

[76] Rule 482(a)(3), (e)(1)(iii), (e)(2)(iii), (e)(3)(iii), (e)(4)(v), and (e)(5)(iv) [17 CFR 230.482(a)(3), (e)(1)(iii), (e)(2)(iii), (e)(3)(iii), (e)(4)(v), and (e)(5)(iv)].

[77] Rule 420(a) [17 CFR 230.420(a)].

[78] Rule 420(b) [17 CFR 230.420(b)]. These legibility requirements include paper size, type size and font, bold-face type, italics, and red ink.

[79] Proposed paragraph (b)(5) of rule 482. The proposed presentation requirements for rule 482 are the same as those currently required under rule 134. Rule 134(a)(iii) [17 CFR 230.134(a)(iii)]. The proposed presentation requirements would replace the current rule 482 requirement that certain required disclosures be ''conspicuous.'' Rule 482(a)(3) [17 CFR 230.482(a)(3)].

In addition to complying with the presentation requirements of proposed paragraph (b)(5) of rule 482, electronic versions of print rule 482 advertisements would also continue to be subject to the legibility requirements of rule 420(b). [17 CFR 230.420(b)].

[80] Proposed paragraphs (b)(1) and (b)(3) of rule 482. The narrative disclosure covered by the prominence requirement would also include, if applicable, the ''subject to completion'' legend that would be required by proposed rule 482(b)(2), and, if the advertisement is used with a profile under rule 498 under the Securities Act [17 CFR 230.498], disclosure explaining that the profile contains information about the fund, describing the procedures for investing in the fund, and indicating the availability of the prospectus. Proposed paragraphs (b)(1)(ii) and (b)(2) of rule 482. In addition, the prominence requirement would extend to disclosures specific to money market funds. Proposed paragraph (b)(4) of rule 482.

in the major portion of the advertisement.[81] These prominence requirements are intended to prevent advertisements from marginalizing or minimizing the presentation of the required disclosure.

In addition, we are proposing that the narrative disclosures that specifically relate to fund performance be presented in close proximity to the performance data in both print and radio and television advertisements.[82] In a print advertisement, this information also would be required to be in the body of the advertisement and not in a footnote. Rule 482 currently requires that performance advertisements identify the dates during which quoted performance occurred.[83] We propose to require this information to be adjacent to, and have no less prominence than, the performance quotation itself.[84] These proximity requirements are intended to help investors more readily find information and disclosure necessary to understand and evaluate the performance data shown, and to remind investors of the limitations of performance data.

We solicit comment on the proposed presentation requirements.

- Are the proposed presentation requirements appropriate to encourage important explanatory information to be given sufficient prominence?
- Are there alternative methods for encouraging important explanatory information to be given sufficient prominence in a rule 482 advertisement?
- Which required disclosures should be covered by any such presentation requirements?
- Should we require a font size larger than the 8-point type required under rule 420 for these required disclosures?
- Are the proposed presentation requirements feasible for radio and television advertisements, given the inherent time limitations associated with the use of these media?
- Are there specific presentation requirements that should apply to the use of electronic media?
- Are there any other requirements that should apply to fund performance advertisements in order to help ensure that performance is presented in a manner that is accurate, balanced, and not misleading?

D. Reorganization of Rule 482 and Technical Form Amendments

We also propose to reorganize rule 482 to make it easier to use. To do this, we have added headings to the rule and have simplified certain provisions, without changing their content, to make the rule easier to understand. In addition, we have reordered provisions within the rule and grouped the provisions by topic.

We request comment on the reorganization of rule 482.

- Would these proposed changes make the rule more comprehensible?
- Are there other changes that would be helpful?
- Would these amendments inadvertently change the meaning of any provisions within the rule?

We also propose to amend Item 21 of Form N–1A, Item 25 of Form N–3, and Item 21 of Form N–4, and to delete Item 4(c) of Form N–3, Item 4(b) of Form N–4, and Item 25 of Form N–6 to reflect the proposed removal of the ''substance of which'' requirement in rule 482.[85] These items require funds that advertise performance data to provide in their prospectuses or statements of additional information (''SAI'') certain explanatory disclosure about the methods by which the performance data is calculated.[86] This information is included in the prospectus or SAI to satisfy the ''substance of which'' requirement in connection with performance advertising.[87] The proposed removal of the ''substance of which'' requirement renders this disclosure unnecessary. As a result, we are revising these items in Forms N–1A, N–3, and N–4 to prescribe the methods of calculation to be used if performance data is included in the prospectus,[88] and to eliminate the requirements for information intended to satisfy the ''substance of which'' requirement. Form N–6, the newly adopted registration form for variable life insurance, will not contain any item concerning performance data because we have not prescribed any particular method for calculating variable life insurance performance.[89]

We also note that we are proposing to delete requirements in Forms N–1A, N–3, and N–4 that specifically require disclosure of the method of calculating performance, and the length of and the last day of the base period used in calculating a performance quotation, and requirements in Form N–1A that require disclosure of the income tax rate used in a performance calculation.[90] We emphasize, however, that if a fund chooses to include any performance information in its prospectus or SAI that is not required to be included by the applicable registration form, the fund is responsible for ensuring that the information is not incomplete, inaccurate, or misleading.[91] Thus, a fund should include any disclosure, including the method of calculating performance, and the dates of the performance and tax rates used, that is required to meet this responsibility.

We request comment on the proposed amendments to Forms N–1A, N–3, N–4, and N–6.

- If we eliminate the ''substance of which'' requirement from rule 482, are there other reasons why a fund should continue to be required to include information about its methods of calculating performance in its prospectus or SAI?
- For example, should a fund be required to include in the SAI a description of the methods by which

[81] Proposed paragraph (b)(5) of rule 482.

[82] Proposed paragraph (b)(5) of rule 482. The disclosure subject to the proximity requirement would include the disclosure required by proposed paragraph (b)(3) of rule 482 that the performance data quoted represents past performance; that past performance does not guarantee future results; in the case of a non-money market fund, that the investment return and principal value of an investment will fluctuate; that current performance may be lower or higher than the performance data quoted; and the toll-free telephone number and, if available, website where an investor may obtain month-end performance data.

[83] Rule 482(e)(1)(iv), (e)(2)(v), (e)(3)(iv), (e)(4)(vi), and (e)(5)(v) [17 CFR 230.482(e)(1)(iv), (e)(2)(v), (e)(3)(iv), (e)(4)(vi), and (e)(5)(v)].

[84] Proposed paragraphs (d)(1)(iv), (d)(2)(v), (d)(3)(iv), (d)(4)(vi), (d)(5)(v), and (e)(1)(i) of rule 482.

[85] Form N–1A [17 CFR 239.15A; 17 CFR 274.11A] is the registration form for open-end management investment companies. Form N–3 [17 CFR 239.17a; 17 CFR 274.11b] is the registration form for separate accounts organized as management investment companies that offer variable annuity contracts. Form N–4 [17 CFR 239.17b; 17 CFR 274.11c] is the registration form for separate accounts organized as unit investment trusts that offer variable annuity contracts. Form N–6 [17 CFR 239.17c; 17 CFR 274.11d] is the registration form for separate accounts that are registered as unit investment trusts and that offer variable life insurance policies.

[86] The statement of additional information contains more extensive and detailed information about a fund than is contained in the prospectus, and is required to be delivered to investors upon request.

[87] Investment Company Act Release No. 23064 (Mar. 13, 1998) [63 FR 13916, 13936–37 (Mar. 23, 1998)]; 1986 Advertising Proposing Release, *supra* note 24, at 34392.

[88] Under proposed rule 482, these methods would continue to apply to performance data included in advertisements, as well. *See, e.g.,* proposed paragraphs (d)(1)(i), (d)(2)(i), (d)(3)(i), (d)(4)(i), and (e)(1)(i) of rule 482.

[89] Investment Company Act Release No. 25522 (Apr. 12, 2002) [67 FR 19848, 19856 (Apr. 23, 2002)] (discussing variable life insurance performance).

[90] Item 21(a)(5) and (b)(7) of Form N–1A; Item 25(a)(iii), (a)(iv), (b)(i)(B), (b)(i)(C), (b)(ii)(B), (b)(ii)(C), (b)(iii)(B), and (b)(iii)(C) of Form N–3; Item 21(a)(iii), (a)(iv), (b)(i)(B), (b)(i)(C), (b)(ii)(B), (b)(ii)(C), (b)(iii)(B), and (b)(iii)(C) of Form N–4.

[91] *See* General Instruction C.3.(b) of Form N–1A; General Instruction 2 for Parts A and B of Form N–3; General Instruction 2 for Parts A and B of Form N–4; General Instruction C.3.(b) of Form N–6 (allowing information that is not otherwise required to be included in the prospectus or SAI so long as it is not incomplete, inaccurate, or misleading).

any non-standardized performance is calculated?

E. Compliance Date

If we adopt the proposed amendments, we intend that the amendment eliminating the ''substance of which'' requirement from rule 482 will take effect immediately upon the effective date of the amendments. We also expect to require fund advertisements used 90 days or more after the effective date of the amendments to comply with the amendments. The Commission requests comment on these proposed dates. Is 90 days an appropriate transition period for compliance, or should this be shorter or longer? Should we base compliance on the date an advertisement is used, or should we require compliance based on the date an advertisement is submitted for publication, or should we adopt some other alternative?

III. Request for Comments

A. Request for Comments on the Framework for Regulation of Investment Company Advertisements

The amendments we propose today would enhance the basic framework for fund performance advertising that we have had in place for many years. Since 1988, we have required mutual funds that advertise performance to include standardized performance numbers in their advertisements.[92] In that same period, the assets of the industry have grown from approximately $800 billion to over $7 trillion, and the number of available mutual funds has exploded from nearly 3,000 to over 8,000.[93] Also, the range of mutual funds available to investors has changed dramatically. Today, investors choose from a broad range of fund options with very different risk profiles, including, among others, money market funds, government bond funds, high-yield bond funds, domestic equity funds, and international equity funds.

Investors today face a daunting task when they attempt to sort through the wealth of available mutual fund options to choose an appropriate investment. In making those choices, investors frequently rely on investment performance.[94] Given the enormous growth and change in the fund industry in the past twenty-five years, the importance of fund sales materials to investor choices among funds, and the tendency of investors to emphasize performance in selecting mutual funds, we believe it is appropriate to reexamine the framework of regulation for investment company advertising and to consider whether it should be modified to better serve investors.

The Commission is undertaking an effort to modernize our rules and forms in many areas. In light of this effort, we are searching for ways to provide more meaningful and useful information to investors about mutual funds.

We request comment generally on whether the framework for the regulation of mutual fund advertising could be modified, and specifically on the following issues.

- Are there alternatives to the framework of regulation for investment company advertising that is presently in place that would more effectively protect investors?
- Has the role of advertisements changed over the past several years? Has the role of advertisements changed when compared to the role of the statutory prospectus? If so, how? Should we revise our approach to the regulation of fund advertisements in light of those changes?
- For example, would it be better simply to require that mutual fund advertisements adhere to general standards that would result in providing information that would assist the average investor without prescribing any regulation of the contents of advertisements, including standards for performance advertising?
- To what extent should standards for fund advertising be established by the Commission, and to what extent should they be established by other organizations, *e.g.,* NASDR? For example, should we require NASDR to play a larger role in establishing standards for advertising? Would the limits on NASDR jurisdiction (that it regulates only its members) pose any issues if NASDR were to assume a larger role in establishing the standards for fund advertising?
- Is the standardization of performance data necessary or helpful to enable investors to compare different funds or prevent fraudulent performance claims? Does the advertisement of standardized performance data obscure important factors, such as costs and risk, that vary from fund to fund and are important to an investment decision?
- Does the standardization of performance advertising encourage too much reliance on performance? Should our rules be designed to produce more qualitative information in advertisements? If so, how?
- Currently, our rules include standardized performance calculations for investment companies, but not for investment advisers. Does this difference make sense and, if not, what changes should we make?
- Should fund advertisements be required to include information about a variety of factors that are important in making an investment decision? If so, should the Commission prescribe the factors that should be covered (*e.g.,* investment objectives, fees, risk), or should the Commission simply establish a more general requirement that advertisements present a balanced discussion of qualitative and quantitative information that would assist the average investor?
- Is it helpful or necessary to prescribe the manner in which information should be presented in advertisements, *e.g.,* emphasis and location of information or font size?
- Should radio and television fund advertisements, or other forms of advertisement where the investor may not refer back to the advertisement, be regulated differently than print advertisements?
- What are the costs for funds, and indirectly for investors, as well as other parties, associated with various alternative means of regulating fund advertising?
- What liability standards should apply to fund advertisements?

B. General Request for Comments

The Commission requests comment on the amendments proposed in this release, suggestions for additional provisions or changes to existing rules or forms, and comments on other matters that might have an effect on the proposals contained in this release.

C. Request for Comments on Rule 482(a)(5)(i) Relating to Variable Insurance Contracts

We also wish to solicit comment on a provision of rule 482 relating to variable insurance contracts. Rule 482 generally prohibits a rule 482 advertisement from containing or being accompanied by an application to purchase fund shares.[95] In order to preserve the statutory prospectus as the primary disclosure document by encouraging investors to read the statutory prospectus before investing, a rule 482 advertisement is required to include a legend telling investors how to obtain a prospectus and directing

[92] 1988 Advertising Adopting Release, *supra* note 21.

[93] Investment Company Institute, *2001 Mutual Fund Fact Book* at 63 (41st ed.); Investment Company Institute, *Trends in Mutual Fund Industry: March 2002,* http://www.ici.org/facts_figures/trends_0302.html (Apr. 29, 2002).

[94] *See supra* note 37 and accompanying text.

[95] Rule 482(a)(5) [17 CFR 230.482(a)(5)].

them to read it before investing.[96] The prohibition against applications accompanying rule 482 advertisements was included in rule 482 because the Commission believed that permitting purchase applications in a rule 482 advertisement would undermine the purpose of the legend requirement.[97]

Rule 482 contains an exception from the prohibition against applications for unit investment trusts that offer variable annuity or variable life insurance contracts.[98] These contracts permit investors to allocate premiums among a variety of underlying mutual funds in which the unit investment trust invests. The contract prospectuses contain descriptions of the underlying mutual funds, which are considered rule 482 advertisements for the underlying funds.[99] The underlying funds are separately registered as management investment companies on Form N–1A and offer their shares through separate prospectuses. The exception from the prohibition on applications for variable insurance contracts permits an application for the contract (which provides for investor allocation of purchase payments to specific underlying funds) to accompany the contract prospectus, even though the contract prospectus constitutes a rule 482 advertisement for the underlying mutual funds and even though prospectuses for the underlying funds do not accompany the contract prospectus.[100]

In recent years, members of the variable insurance industry have requested that the Commission staff clarify the scope of the variable insurance exception from the application prohibition of rule 482. By its terms, the exception permits a contract application to accompany a rule 482 advertisement for the underlying funds only when the rule 482 advertisement is a part of the contract prospectus itself. Members of the industry have argued that it should be permissible for a contract prospectus and application to be accompanied by other rule 482 advertisements for the underlying funds that are not a part of the prospectus itself.

Advocates of this position argue that rule 482 permits either of the following: (i) Delivery of a rule 482 advertisement for an underlying fund (without an application); and (ii) delivery of a contract prospectus with an application. They therefore argue that, under rule 482, delivery of a rule 482 advertisement for an underlying fund (without an application) could be either preceded or followed by delivery of a contract prospectus with an application. As a result, they conclude that it should be permissible for a contract prospectus and application to be accompanied by other rule 482 advertisements for the underlying funds because whether the delivery of the additional rule 482 advertisements is made together with the contract material or separately from it is a question of form, rather than substance.

We believe that it would be useful to clarify the ambiguities in the scope of the insurance exception from the application prohibition of rule 482, so that issuers of variable insurance products may operate with greater certainty. Therefore, we request comment on this issue.

We request comment on rule 482(a)(5)(i) relating to variable insurance products.

- Should rule 482 advertisements for the underlying funds that are not contained in the contract prospectus itself be permitted to be delivered simultaneously with the contract prospectus and accompanying purchase application?
- Should we amend rule 482 to explicitly permit this practice, or should we amend rule 482 to explicitly prohibit this practice?
- Particularly in light of the fact that we are proposing to remove the ''substance of which'' requirement from rule 482, are there relevant differences between permitting a contract prospectus that is filed with the Commission and subject to strict liability under Section 11 of the Securities Act to be accompanied by an application and permitting additional rule 482 advertisements for the underlying funds that are not subject to Section 11 liability to be accompanied by an application?[101]
- Variable insurance products are one among many channels through which mutual funds are distributed. How would explicitly broadening, or confining, the scope of the insurance exception from the application prohibition affect other sectors of the fund industry that are not permitted to include fund applications with rule 482 advertisements? What would the competitive effects be within the variable insurance industry and as between the variable insurance industry and other sectors of the fund industry?
- Should the Commission reconsider the insurance exception for competitive or other reasons? Is the insurance exception consistent with investor protection, given the limited amount of information about the underlying funds that is typically contained in the contract prospectus? We note, for example, that the fee table of recently adopted Form N–6 for variable life insurance policies requires disclosure of the range of expenses of all underlying funds offered through a policy rather than the expenses of each fund and that the Commission has proposed conforming amendments to the fee table of Form N–4 for variable annuities.[102]

IV. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits associated with its rules. The Commission requests comment and empirical data regarding the costs and benefits of the proposed amendments to the advertising rules.

A. Introduction

The Commission is proposing rule amendments under the Securities Act and the Investment Company Act. To provide funds with the ability to disclose more timely information in advertisements, the proposed amendments would remove the ''substance of which'' requirement contained in rule 482 under the Securities Act, and would rescind the provisions in rule 134 under the Securities Act that apply to funds. In addition, the proposed amendments would reinforce the antifraud protections in the fund advertising rules, and would require enhanced disclosure of certain information in fund advertisements designed to encourage advertisements that convey balanced information to prospective investors. Finally, the proposed amendments would make certain organizational changes to rule 482 and

[96] Rule 482(a)(3)(i) [17 CFR 230.482(a)(3)(i)]; proposed paragraph (b)(1)(i) of rule 482.

[97] 1986 Advertising Proposing Release, *supra* note 24, at 34391 nn. 57–60 and accompanying text.

[98] Rule 482(a)(5)(i) [17 CFR 230.482(a)(5)(i)]; proposed paragraph (c)(1) of rule 482. A rule 482 advertisement may also be accompanied by an application when the advertisement is used with a profile permitted by rule 498 under the Securities Act. Rule 482(a)(5)(ii) [17 CFR 230.482(a)(5)(ii)]. *See* proposed paragraph (c)(2) of rule 482.

[99] *See* Item 5(c) of Form N–4 and Item 4(c) of Form N–6 (requiring brief description of each underlying mutual fund offered through the contract). *See also* Investment Company Act Release No. 14575 (June 14, 1985) [50 FR 26415, 26155 n. 48 and accompanying text (June 25, 1985)] (describing treatment of description of underlying mutual funds in contract prospectus as omitting prospectuses).

[100] *See* 1986 Advertising Proposing Release, *supra* note 87, at 34391 n. 60.

[101] Section 11 imposes strict liability on issuers, as well as other persons, including directors and underwriters, for material misstatements and omissions contained in the registration statement. 15 U.S.C. 77k.

[102] Investment Company Act Release No. 25522, *supra* note 89 (adopting Form N–6); Investment Company Act Release No. 25521 (Apr. 12, 2002) [66 FR 19885 (Apr. 23, 2002)] (proposing changes to fee table of Form N–4).

technical amendments to the registration forms.

1. Present Fund Advertising Rules

Like most issuers of securities, when an investment company (''fund'') offers its shares to the public, its promotional efforts become subject to the advertising restrictions of the Securities Act. Congress imposed these restrictions so that investors would base their investment decisions on the full disclosures contained in the ''statutory prospectus,'' which Congress intended to be the primary selling document.[103] The advertising restrictions of the Securities Act cause special problems for many investment companies, particularly for open-end management investment companies (''mutual funds'') and other investment companies that continuously offer and sell their shares. For these funds, the advertising restrictions apply continuously because the offering process, in effect, is continuous. To address these problems, the Commission has adopted a number of special advertising rules for investment companies, including rule 482 and rule 134.

Rule 482

The Commission adopted rule 482 under the authority of section 10(b) of the Securities Act, which permits the Commission to adopt rules that provide for a prospectus that omits ''in part'' or ''summarizes'' information in the statutory prospectus.[104] Rule 482 permits investment companies to advertise any information ''the substance of which'' is included in the statutory prospectus.[105] The theory behind the ''substance of which'' requirement is that an advertisement cannot be one that ''omits'' information from the statutory prospectus unless all of the information in the advertisement is derived from information in the statutory prospectus.[106] Significantly, rule 482 provides a means for mutual funds to advertise performance information according to standardized formulas.[107] Rule 482 also requires advertisements to comply with certain disclosure requirements, particularly when presenting performance figures.[108]

Rule 134

In contrast to rule 482, rule 134 is a content-based rule that specifies certain categories of information that a fund may advertise. Originally, rule 134 communications, known as ''tombstone advertisements,'' were intended merely to announce the existence of a public offering and serve as a simple means for soliciting inquiries for the statutory prospectus.[109] Over the years, however, the Commission has amended rule 134, broadening the permissible categories of information that a fund may include in its tombstone advertisements.[110] Today, funds may advertise a broad range of information under rule 134, other than performance information.[111]

2. Present Burden of Fund Advertising Rules

Based on the Commission staff's discussions with certain fund complexes and its experience with the various types of investment companies registered with the Commission, we estimate that the current annual hour burden associated with rule 482 and rule 134 is approximately 40.275 hours per investment company.[112] For the industry overall, this represents 225,015 (40.275 hours per investment company × 5,587 investment companies) burden hours, or $9,222,465 (225,015 hours × $40.986 wage rate) in internal costs.[113] Another 89,143 hours, or $3,653,615 (89,143 hours × $40.986 wage rate) in internal costs, are imposed by the requirement that funds comply with rule 34b–1 under the Investment Company Act, which requires that any performance data included in supplemental sales literature be accompanied by performance data computed using the standardized formulas for advertising performance under rule 482.[114] The Commission estimates that external costs presently associated solely with the regulatory burden of complying with the advertising rules are negligible.[115] The benefits and costs associated with the proposed amendments affect these totals as indicated in the discussion that follows.

B. Benefits

The proposed amendments would modify rule 482 of the Securities Act and related rules and forms, to provide more timely, informative, and balanced information in fund advertising for the benefit of investors. The amendments would also simplify and clarify the advertising rules, thus reducing regulatory compliance costs, and these cost savings may be passed on to investors.

1. Enhanced Disclosure of Information to Investors

Currently, the regulations concerning advertising include significant disclosure requirements. The proposed amendments would enhance the disclosure provided to investors in fund advertising in several respects:

• *Availability of Monthly Performance Figures.* Advertisements would have to disclose the availability of updated monthly performance figures by a toll-free telephone number, and, if

---

[103] ''Statutory prospectus'' refers to the full prospectus required by Section 10(a) of the Securities Act. 15 U.S.C. 77j(a).

[104] 15 U.S.C. 77j(b). *See also* 1979 Advertising Adopting Release, *supra* note 18.

[105] Rule 482(a)(2) under the Securities Act [17 CFR 230.482(a)(2)].

[106] 1977 Advertising Proposing Release, *supra* note 20, at 30380.

[107] *See supra* note 21.

[108] Because a rule 482 advertisement is a prospectus under section 10(b) of the Securities Act [15 U.S.C. 77j(b)], a rule 482 advertisement is subject to section 12(a)(2) of the Securities Act [15 U.S.C. 77*l*(a)(2)], which imposes liability for materially false or misleading statements in a prospectus or oral communication, subject to a reasonable care defense. Rule 482 advertisements are also subject to the antifraud provisions of the federal securities laws.

[109] *See supra* note 26.

[110] *See supra* note 27.

[111] Because the Commission adopted rule 134 under section 2(a)(10)(b) of the Securities Act, rule 134 advertisements are not considered prospectuses. As a result, rule 134 advertisements do not create liability under section 12(a)(2) of the Securities Act, which by its terms applies only to prospectuses and oral communications. Rule 134 advertisements, however, are subject to liability under the antifraud provisions of the federal securities laws.

[112] This figure was determined based on averages derived from information from nine fund complexes that offer mutual funds or variable insurance products. Because there was little data for closed-end funds, the burden hours for closed-end funds were based on estimates from one fund complex that offers closed-end funds and the Commission staff that these funds would incur approximately 8% of the burden of open-end funds.

[113] These figures are based on a Commission estimate of 5587 investment companies and an estimated hourly wage rate of $40.986. The estimate of the number of investment companies is based on data derived from the Commission's EDGAR filing system. The estimated wage rate figure is based on published hourly wage rates for in-house attorneys ($38.95), paralegals ($20.94), and compliance inspectors ($22.60) and the estimate, based on the Commission staff's discussions with certain fund complexes, that attorneys would account for 50% of hours spent on advertising regulation and that paralegal and compliance inspectors would account for the remaining 50% in equal ratio, yielding a weighted wage rate of $30.36 (($38.95 × .50) + ($20.94 × .25) + (22.60 × .25) = $30.36). Securities Industry Association, *Report on Office Salaries in the Securities Industry 2000* (Oct. 2000); Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2000* (Oct. 2000). This weighted wage rate was then adjusted upward by 35% for overhead, reflecting the costs of supervision, space, and administrative support, to obtain the total per hour internal cost of $40.986 ($30.36 × 1.35 = $40.986).

[114] 17 CFR 270.34b–1. These estimates are based on the number of pieces of sales literature filed annually with the Commission and the NASD, and the estimated wage rate described above in note 113.

In addition, Rule 156 under the Securities Act [17 CFR 230.156] is an interpretive regulation giving guidance as to whether sales literature is materially misleading. There is no cost associated directly with this rule.

[115] External costs might include, for example, costs of hiring outside counsel or accountants, or purchasing new equipment.

available, a website where an investor may obtain performance data current to the most recent month-end.[116] Easy access to and awareness of this information would benefit investors not only by providing potentially more accurate and timely performance data and reducing the ability of funds to selectively use performance data, but also by highlighting for investors the limitations of relying too heavily on any one set of performance figures.

• *Warning Legend.* If an advertisement provides performance figures, the proposed amendments would require the inclusion of an amended legend stating that past performance does not guarantee future results, and that current performance may be lower or higher than the data quoted.[117] This legend would benefit investors by making them more aware of the limitations of relying on performance data for investment decisions, and thus may result in more informed investment decisions.

• *Availability of Charge and Expense Information.* Advertisements would have to highlight the availability of information concerning charges and expenses in the statutory prospectus.[118] This provision would benefit investors by providing easy access to an important factor that would affect their returns, which in turn would allow investors to more easily compare the costs of competing funds.

• *Prominence Requirements.* Advertisements would be required to present certain disclosures, including those discussed above, (i) in a size and type style at least as prominent as that used in the major portion of the advertisement, or (ii) in the case of radio or television advertisements, with emphasis equal to that used in the major portion of the advertisement.[119] This provision would ensure that advertisers do not marginalize or minimize the presentation of the required disclosure described above. The provision also helps to ensure some uniformity between different advertisements, facilitating investors' ability to compare the products of competing funds.

• *Proximity Requirement.* In addition, the required disclosures regarding performance data would have to be identified in the body of the advertisement in close proximity to the performance data and not in a footnote, or, with regard to television or radio advertisements, presented in close proximity to the performance data.[120] The length of and the date of the last day in the base period used in computing yield quotations, average annual total returns, after-tax returns, and other performance measures would have to be adjacent to the performance data.[121] As with other disclosure requirements, this provision would help investors to more easily find information necessary to evaluate the performance figures shown and would help to remind investors of the limitations of performance data.

The benefits of these enhanced disclosure requirements to investors may be limited by the extent to which funds currently provide this disclosure voluntarily. Staff discussions with members of the fund industry indicate that most investment companies already comply with many of the requirements of the proposed amendments, by, for example, calculating performance data on at least a monthly basis, inserting warnings in advertisements that past performance is no guarantee of future performance, and operating websites and telephone call banks.

Nevertheless, the enhanced disclosure requirements would provide two benefits to investors. To the extent investment decisions are made based on advertising, the improved disclosure would result in investors making better informed investment decisions, and therefore in a more efficient distribution of assets by investors among different funds. The transparency resulting from the enhanced disclosure in fund advertising may, in turn, also contribute to increased competition among funds and result in a more efficient allocation of resources among competing investment products. Although it is not possible to quantify the beneficial effects of more efficient allocation of investors' assets and increased competition, they may be significant, given the size of the mutual fund industry.[122] We request comment on the nature and magnitude of the benefits to investors resulting from enhanced disclosure of information that would be required by the proposed amendments.

2. Simplification and Clarification of Fund Advertising Rules

The proposed amendments would add clarifying language to rule 482 and rule 156 under the Securities Act and rule 34b–1 under the Investment Company Act to reemphasize the separate applicability of the antifraud provisions of the federal securities laws. In addition, the proposed amendments would reorganize and modify rule 482 to make it easier for funds to apply, by adding headings, reordering provisions, and clarifying certain language.

The proposed amendments to rule 482 may aid funds and others in understanding and complying with the advertising rules, making it easier and cheaper for funds to advertise. This may, in turn, contribute to an increased flow of useful investment information to investors, which may lead to better-informed investment decisions and amplify the previously discussed benefits of efficient asset allocation.[123] Although difficult to quantify, this easing of regulation may provide some reduction of burden to the funds that choose to advertise. We request comment on the nature and magnitude of the benefits resulting from this reduction of regulatory burden.

3. Elimination of the ''Substance of Which'' Requirement and the Rescission of Rule 134 Provisions That Apply to Funds

To simplify the current structure of fund advertising rules and to provide funds the ability to disclose more timely information in advertisements, the proposed amendments would also remove the ''substance of which'' limitation contained in rule 482, allowing funds to include in their 482 advertisements material that is not included in the statutory prospectus. These amendments would render the current distinction between rule 482 and rule 134 advertisements unnecessary. As such, the proposed amendments would also rescind the provisions of rule 134 that apply to funds.

The elimination of the ''substance of which'' requirement would enable funds to avoid the need to include or update advertising related information in their prospectus or SAI, both in the initial registration statements and in post-effective amendments, before issuing an advertisement to the public. This would reduce filing costs for funds, including both internal costs and external costs such as outside legal fees.

[116] Proposed paragraph (g)(2) of rule 482.

[117] Proposed paragraph (b)(3)(i) of rule 482.

[118] Proposed paragraph (b)(1)(i) of rule 482. This disclosure would also be required in an advertisement used with a profile pursuant to rule 498 under the Securities Act. Proposed paragraph (b)(1)(ii) of rule 482.

[119] Proposed paragraph (b)(5) of rule 482.

[120] *Id.*

[121] Proposed paragraphs (d)(1)(iv), (d)(2)(v), (d)(3)(iv), (d)(4)(vi), and (d)(5)(v) of rule 482.

[122] *See* Investment Company Institute, *Trends in Mutual Fund Investing: March 2002, supra* note 93 (assets of mutual funds total $7.1 trillion).

[123] The trade-off between lower advertising burdens and increased advertising activity is complex and further complicated by business cycles and marketing strategy among other factors. We believe, however, that investors and funds would enjoy benefits in any event—either resources would be saved in reducing the costs and burdens of advertising or they would be spent to increase the amount and timeliness of information provided to investors in advertising.

The proposed amendments would also reduce the cost to the funds of printing and distributing prospectuses and SAIs. The elimination of unnecessary material from the prospectus or SAI may also help investors and others more easily understand the remaining information.

Finally, the proposed rescission of the rule 134 provisions that apply to funds would consolidate the regulation of most fund advertising in one rule as rule 482, as amended, would then cover advertisements now covered by rule 134. This simplification would contribute to the benefits of easier and cheaper advertising as discussed in section IV.B.2 (''Simplification and Clarification of Advertising Rules'') above, principally by removing the unnecessary restrictions on the content of the advertisements and the unnecessary distinction with regard to their legal classification. The transfer of fund advertising regulation from rule 134 to rule 482 may also enhance investor protection by subjecting all fund advertisements to potential civil liability under section 12(a)(2) of the Securities Act.[124] The Commission requests comment on the increase in potential liability under section 12(a)(2) for issuers that currently rely on rule 134 for their advertising.

The Commission estimates that, on an annual basis, these benefits will save funds approximately 1.96 burden hours, or $80.33, per investment company in internal costs but only negligible amounts in external costs. We estimate that 5587 investment companies will be affected by the proposed amendments, and, thus, the Commission estimates that the annual internal burden associated with rule 482, for purposes of the Paperwork Reduction Act, will decrease by approximately 10,950 (1.96 hours per investment company × 5,587 investment companies) burden hours.[125] These burden hours represent a monetary savings of approximately $448,797 (10,950 hours × $40.986 wage rate) per year.[126] We request comment on this estimate and on the nature and magnitude of any other benefits that would result from the proposed amendments.

C. Costs

The Commission estimates that the costs of the proposed amendments, in the aggregate, would be minimal and limited in duration. The Commission estimates that funds would incur one-time costs in modifying their current rule 482 advertising to meet the new disclosure and presentation requirements, although many funds already provide the disclosure that would be required and make available more current performance information voluntarily. For example, funds may have to modify their layouts and typesetting in order to convert existing advertisements to meet the requirements of the rule, or alternatively, replace existing advertisements more quickly than they otherwise would. However, the proposed amendments would allow a 90-day transition period, enabling funds to come into compliance with the new requirements in their next generation of quarterly advertisements with smaller conversion or replacement costs.

In addition, the requirement for funds to provide access to performance figures that are current as of the last month end may also impose costs, some of which would be ongoing, both to generate such figures on a monthly basis and to provide the information by a toll-free telephone number. This could include costs for computer time, accounting personnel, information technology staff, and additional computer and telephone equipment. However, many, if not most, funds already provide this or more current performance information through these means and, therefore, the marginal cost for most funds for making updated performance information available is expected to be negligible.

The elimination of the ''substance of which'' requirement and the rescission of rule 134 as applicable to funds may require some funds to incur costs to convert many of their tombstone advertisements to rule 482 advertisements. These costs, however, should be minimal and non-recurring, since the rule 482 requirements would permit advertisements that are not significantly different from those currently permitted under current rule 134.

The Commission estimates the one-time switchover costs for each investment company attributable to the proposed amendments would be approximately 2.18 hours, or $89.35 (2.18 hours × $40.986 wage rate), in internal costs, and $2,417 in external costs.[127] In total this represents a one-time cost of approximately 12,180 internal burden hours (translating into approximately $499,209 (12,180 hours × $40.986 wage rate) in internal costs) and $13,503,779 ($2,417 cost per investment company × 5,587 investment companies) in external costs.[128] We request comment on this estimate, and on the nature and magnitude of any other costs to funds resulting from the proposed amendments.

D. Conclusion

The Commission expects that the proposed advertising rule amendments will encourage more informed and efficient investing, while easing the regulatory burden on fund advertising, and that these likely benefits would justify the associated costs. To assist in the evaluation of the costs and benefits that may result from the proposed amendments, the Commission requests that commenters provide views and data relating to any anticipated costs and benefits associated with these proposals.

V. Consideration of Effects on Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act, section 2(b) of the Securities Act, and Section 3(f) of the Securities Exchange Act of 1934 (''Exchange Act'') require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[129]

The proposed amendments seek to improve fund advertising by enhancing disclosure requirements and by simplifying and clarifying the rules, including elimination of the ''substance of which'' requirement. These changes may improve efficiency. The rule simplifications may lower the regulatory burden on funds engaged in advertising, freeing resources for more productive uses. For example, funds would no longer have to update their prospectuses or SAIs in order to change the types of performance information in

[124] The benefits of potential direct investor suits in both remedying fraudulent advertising by funds and deterring such advertising in the future are difficult to quantify, but may be significant. The benefits would be reduced to the extent that the potential liability would increase litigation and insurance costs for funds. However, because suits based on misleading advertising are relatively rare, we estimate that this cost would be minimal.

[125] The estimate of the number of investment companies is based on data derived from the Commission's EDGAR filing system. The estimate of the decrease in burden hours is based on information gathered from the fund industry by the Commission staff and from the staff's experience with the various advertising regulations.

[126] See discussion in note 113, *supra*, regarding wage rate.

[127] These figures are based on averages derived from information gathered from several members of the fund industry by the Commission staff and from the staff's experience with the various advertising rules. Internal costs would include, for example, the cost of reviewing all fund advertisements for compliance with the revised rules. External costs would include, for example, the costs of typesetting and printing for new fund advertisements.

[128] See discussion in note 113, *supra*, regarding wage rate.

[129] 15 U.S.C. 77b(b), 78c(f), and 80a–2(c).

advertisements. The enhanced disclosure requirements may provide greater and timelier access by investors to updated performance figures, which would promote more efficient allocation of investments by investors and more efficient allocation of assets among competing funds. The proposed amendments may also improve competition, as enhanced disclosure may prompt funds to seek to provide better-informed investors with improved products and services. Finally, the effects of the proposed amendments on capital formation are unclear. Although, as noted above, we believe that the proposed amendments would benefit investors, the magnitude of the effect of the proposed amendments on efficiency, competition, and capital formation is difficult to quantify, particularly given that most funds may already comply with at least some of the new disclosure requirements.

We request comment on whether the proposed amendments, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

VI. Paperwork Reduction Act

A. Introduction

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501, *et seq.*], and the Commission is submitting the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the existing collections of information are: (i) ''Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies''; (ii) ''Form N–2—Registration Statement of Separate Accounts Organized as Management Investment Companies'' [130] (iii) ''Form N–3—Registration Statement of Separate Accounts Organized as Management Investment Companies''; (iv) ''Form N–4—Registration Statement of Separate Accounts Organized as Unit Investment Trusts''; (v) ''Form N–6 Under the Investment Company Act and the Securities Act of 1933, Registration Statement of Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Life Insurance Policies''; and (vi) ''Rule 34b–1 of the Investment Company Act of 1940, Sales Literature Deemed to Be Misleading.'' A new collection of information is being created entitled ''Rule 482 under the Securities Act of 1933, Advertising by an Investment Company.''[131] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Form N–1A (OMB Control No. 3235–0307), Form N–2 (OMB Control No. 3235–0026), Form N–3 (OMB Control No. 3235–0316), Form N–4 (OMB Control No. 3235–0318), and Form N–6 (OMB Control No. 3235–0503) were adopted pursuant to section 5 of the Securities Act [15 U.S.C. 77e] and section 8(a) of the Investment Company Act [15 U.S.C. 80a–8(a)]. Rule 482 of Regulation C was adopted pursuant to section 10(b) of the Securities Act [15 U.S.C. 77j(b)]. Rule 34b–1 (OMB Control No. 3235–0346) was adopted pursuant to section 34(b) of the Investment Company Act [15 U.S.C. 80a–33(b)].

The proposed amendments would modify rule 482 of the Securities Act and related rules and forms, to provide more timely, understandable, and balanced information in fund advertising for the benefit of investors, while simplifying and clarifying the advertising rules for the benefit of funds.[132] First, the proposed amendments would enhance the disclosure that funds would be required to provide in advertisements, including by highlighting the availability of information concerning charges and expenses and requiring an amended legend warning that past performance does not guarantee future results. The proposed amendments would also set forth requirements ensuring that funds present these and other required disclosures at least as prominently as the material included in the body of the advertisement. Second, if a fund advertisement includes performance data, the fund would have to make available to investors month-end performance figures by a toll-free telephone number, and disclosed the availability of month-end performance data in the advertisement. Third, the proposed amendments would add clarifying language to rule 482 under the Securities Act and rule 34b–1 under the Investment Company Act to reemphasize the separate applicability of the antifraud provisions of the federal securities laws, and would amend rule 156 under the Securities Act to provide further guidance regarding the factors to be weighed in determining whether a statement involving a material fact in investment company sales literature is or might be misleading. Fourth, to allow funds the ability to disclose more timely information in advertisements, the proposed amendments would remove the ''substance of which'' limitation contained in rule 482 and would rescind the provisions in rule 134 under the Securities Act that apply to funds. Fifth, the proposed amendments would clarify portions of rule 482 (without changing their content) by adding headings, reordering provisions, and simplifying certain provisions. Finally, the amendments would make technical and conforming changes to Forms N–1A, N–3, N–4, and N–6 to reflect all the rule changes listed above.

The analysis in this PRA summary is divided in two sections. Section VI.B. (''The Registration Forms Burden'') discusses the current PRA burden attributable to the fund advertising rules, which is presently allocated to the collections of information for the various registration forms, and the transfer of this burden to a new collection of information category for rule 482. Section VI.C. (''Change in Burden Attributable to Proposed Amendments'') discusses the net change in burden hours attributable to the proposed amendments for both the new collection of information for rule 482 and the existing collection of information for rule 34b–1.

B. The Registration Forms Burden

Presently, the PRA burdens imposed by rule 482 are accounted for under the various registration forms used by

[130] Although the proposed amendments would not amend Form N–2, that form is included in this Paperwork Reduction Act summary because the PRA burden for rule 482 has previously been included in the various investment company registration statement forms affected by rule 482, including Form N–2. As discussed below, the Commission is transferring the PRA burden associated with rule 482 from all of these registration statement forms to a new rule 482 category.

[131] The proposed amendments would modify rule 482, which is part of Regulation C under the Securities Act of 1933. Regulation C describes the disclosure that must appear in registration statements under the Securities Act and Investment Company Act. The Paperwork Reduction Act (''PRA'') burden associated with rule 482 has previously been included in the various investment company registration statement forms, not in Regulation C. However, because the proposed amendments would eliminate the rationale for allocating the PRA burden for rule 482 to the registration forms, the Commission proposes to transfer the burden associated with rule 482 to a new category. While this transfer and the fluctuation in the numbers of filings would affect the burden hours for the various forms, the proposed amendments to the forms would not have any effect on the burden hours for the forms.

[132] The Commission is proposing amendments to rules 134, 156, and 482 under the Securities Act, rule 34b–1 under the Investment Company Act, and Forms N–1A, N–3, N–4, and N–6 under the Investment Company Act and Securities Act.

investment companies affected by the rule: Form N–1A, Form N–2, Form N–3, Form N–4, and Form N–6. We intend to remove these burden hours associated with rule 482 and place them in a separate rule 482 category in the following amounts:

Form	Hours transferred
Form N–1A	177,514
Form N–2	1,014
Form N–3	792
Form N–4	36,630
Form N–6	9,065
Total hours to be transferred to new rule 482 category	225,015

The information required to be filed with the Commission pursuant to the information collections contained in the registration forms permits the verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

1. Form N–1A

The purpose of Form N–1A is to meet the registration and disclosure requirements of the Securities Act and the Investment Company Act and to enable funds to provide investors with information necessary to evaluate an investment in the fund. The respondents to this information collection are open-end funds registering with the Commission. Compliance with the disclosure requirements on Form N–1A is mandatory. Responses to the disclosure requirements are not confidential.

The current hour burden for preparing an initial Form N–1A filing is 824 burden hours per portfolio, and the Commission attributes 23 of these burden hours per portfolio to compliance with rule 482, reducing the remaining burden hours per portfolio to 801.[133] The current annual hour burden for preparing post-effective amendments on Form N–1A is 122 hours per portfolio, and the Commission attributes 23 of these burden hours per portfolio to rule 482, reducing the remaining burden hours per portfolio to 99. The Commission estimates that, on an annual basis, 193 portfolios file initial registration statements on Form N–1A and 7,525 file post-effective amendments on Form N–1A. Thus, the burden hours attributable to rule 482 to be transferred from Form N–1A to the new rule 482 collection of information equal 177,514 ((23 hours × 193 portfolios) + (23 hours × 7,525 portfolios)). After shifting the rule 482 burden hours to a new collection of information, the total burden hours that remain allocated to Form N–1A for all purposes unassociated with rule 482 would be 899,568 ((801 hours × 193 portfolios) + (99 hours × 7,525 portfolios)).

Except for the transfer of PRA burden from the Form N–1A to the new collection of information for rule 482, the Commission estimates no effect on the remaining PRA burden for Form N–1A from the proposed amendments. The change in PRA burden resulting from the purposed amendments is accounted for under the new rule 482 collection of information.

2. Form N–2

The purpose of Form N–2 is to meet the registration and disclose requirements of the Securities Act and the Investment Company Act and to enable funds to provide investors with information necessary to evaluate an investment in the fund. The respondents to this information collection are closed-end funds registering with the Commission. Compliance with the disclosure requirements of Form N–2 is mandatory. Responses to the disclosure requirements are not confidential.

The current hour burden for preparing an initial registration statement on Form N–2 is 542.4 burden hours per filing, and the current hour burden for preparing a post-effective amendment on Form N–2 is 107.4 hours per filing. The Commission attributes 5.7 of these burden hours per filing to compliance with rule 482, reducing the burden hours per filing to 536.7 and 101.7, respectively. The Commission currently estimates that, on an annual basis, 140 respondents file an initial registration statement on Form N–2 and 38 file post-effective amendments on Form N–2. Thus, the burden hours attributable to rule 482 to be transferred from N–2 to the new rule 482 collection of information equal 1,014 ((5.7 hours × 140 filings) + (5.7 hours × 38 filings)). After shifting the rule 482 burden hours to a new collection of information, the total burden hours that remain allocated to Form N–2 for all purposes unassociated with rule 482 would be 79,003 ((536.7 hours × 140 filings) + (101.7 hours × 38 filings)).

Except for the transfer of PRA burden from Form N–2 to the new collection of information for rule 482, the Commission estimates no effect on the remaining Form N–2 PRA burden from the proposed amendments. The change in PRA burden resulting from the proposed amendments is accounted for under the new rule 482 collection of information.

3. Form N–3

The purpose of Form N–3 is to meet the registration and disclosure requirements of the Securities Act and the Investment Company Act and to enable funds to provide investors with information necessary to evaluate an investment in the fund. The respondents to this information collection are separate accounts, organized as management investment companies and offering variable annuities, registering with the Commission. Compliance with the disclosure requirements of Form N–3 is mandatory. Responses to the disclosure requirements are not confidential.

The current annual hour burden for preparing an initial registration statement on Form N–3 is 910.5 hours per portfolio, and the Commission attributes 3.3 of these burden hours per portfolio to compliance with rule 482, reducing the remaining burden hours per portfolio to 907.2.[134] The current annual hour burden for preparing post-effective amendments on Form N–3 is 151.7 hours per portfolio, and the Commission attributes 3.3 of these burden hours per portfolio to rule 482, reducing the remaining burden hours per portfolio to 148.4. The Commission estimates that, on an annual basis, no initial registration statements will be filed on Form N–3 and 60 post-effective amendments, including 240 portfolios, will be filed on Form N–3. Thus, the burden hours attributable to rule 482 to be transferred from Form N–3 to the new rule 482 collection of information equal 792 (3.3 hours × 240 portfolios). After shifting the rule 482 burden hours to a new collection of information, the total burden hours that remain allocated to Form N–3 for all purposes unassociated with rule 482 would be 35,616 (148.4 × 240 portfolios).

Except for the transfer of PRA burden from Form N–3 to the new collection of

[133] The estimate of the burden hours attributable to compliance with rule 482 for filings on Forms N–1A and Form N–2 are based on information supplied to the Commission staff by members of the fund industry and the staff's experience with these registration forms.

[134] Estimates of the burden hours attributable to rule 482 for Forms N–3, N–4, and N–6 were derived by estimating the total burden hours for compliance with rule 482 for all variable insurance separate accounts, based on the staff's discussions with a member of the variable insurance products industry that issues both variable annuities and variable life insurance policies. This estimate of the total rule 482 burden hours for variable insurance products filings was allocated among Form N–3, Form N–4 and Form N–6 filings based on the ratio of burden hours previously allocated to each of these forms for PRA purposes. However, we excluded burden hours attributable to initial filings on Form N–3 because we currently anticipate no such filings.

information for rule 482, the Commission estimates no effect on the remaining PRA burden for Form N–3 resulting from the proposed amendments. The change in PRA burden resulting from the proposed amendments is accounted for under the new rule 482 PRA collection of information.

4. Form N–4

The purpose of Form N–4 is to meet the registration and disclosure requirements of the Securities Act and the Investment Company Act and to enable separate accounts issuing variable annuity contracts to provide investors with information necessary to evaluate an investment in a contract. The respondents to this information collection are separate accounts, organized as unit investment trusts and offering variable annuities, registering with the Commission. Compliance with the disclosure requirements of Form N–4 is mandatory. Responses to the disclosure requirements are not confidential.

The current hour burden for preparing an initial Form N–4 filing is 298 burden hours per filing, and the Commission attributes 24.8 of these burden hours per filing to rule 482, reducing the remaining burden hours per filing to 273.2.[135] The current annual hour burden for preparing post-effective amendments on Form N–4 is 219.8 hours per filing, and the Commission attributes 24.8 of these burden hours per filing to rule 482, reducing the remaining burden hours per filing to 195. The Commission estimates that, on an annual basis, 157 respondents file initial registration statements on Form N–4 and 1320 respondents file post-effective amendments on Form N–4. Thus, the burden hours attributable to rule 482 to be transferred from Form N–4 to the new rule 482 collection of information equal 36,630 ((24.8 hours × 157 filings) + (24.8 hours × 1320 filings)). After shifting the rule 482 burden hours to a new collection of information, the total hour burden that remains allocated to Form N–4 for all purposes unassociated with rule 482 would be 300,292 ((273.2 hours × 157 filings) + (195 hours × 1320 filings)).

Except for the transfer of PRA burden from Form N–4 to the new collection of information for rule 482, the Commission estimates no effect on the remaining PRA burden for Form N–4 resulting from the proposed amendments. The change in PRA burden resulting from the proposed amendments is accounted for under the new rule 482 PRA collection of information.

5. Form N–6

The purpose of Form N–6 is to meet the registration and disclosure requirements of the Securities Act and the Investment Company Act and to enable separate accounts issuing variable life insurance policies to provide investors with information necessary to evaluate an investment in a policy. The respondents to this information collection are separate accounts, organized as unit investment trusts and offering variable life insurance policies, registering with the Commission. Compliance with the disclosure requirements of Form N–6 is mandatory. Responses to the disclosure requirements are not confidential.

The current hour burden for preparing an initial registration statement on Form N–6 is 800 burden hours per filing and the hour burden for a post-effective amendment on Form N–6 is 100 hours per post-effective amendment filed as an annual update, and 10 hours per post-effective amendment filed for other purposes. The Commission attributes 35 of these burden hours per filing to compliance with rule 482 for both initial registration statements and post-effective amendments that are annual updates.[136] The Commission estimates no burden hours associated with rule 482 for additional post-effective amendments that are not annual updates. The Commission estimates that, on an annual basis, 59 initial registration statements will be filed on Form N–6 and 500 post-effective amendments will be filed on Form N–6, 200 as annual updates and 300 as additional post-effective amendments.[137] Thus, the burden hours attributable to rule 482 to be transferred from Form N–6 to the new rule 482 collection of information equal 9,065 ((35 hours × 59 filings) + (35 hours × 200 filings)). The total hour burden that remains allocated to Form N–6 for all purposes unassociated with rule 482 would be 61,135 ((765 hours × 59 filings) + (65 hours × 200 filings) + (10 hours × 300 filings)).

Except for the transfer of PRA burden from Form N–6 to the new collection of information for rule 482, the Commission estimates no effect on the remaining PRA burden for Form N–6 resulting from the proposed amendments. The change in PRA burden resulting from the proposed amendments is accounted for under the new rule 482 PRA collection of information.

C. Change in Burden Attributable to Proposed Amendments

The information required by the proposed amendments to the advertising rules is primarily for the use and benefit of investors. The Commission is concerned that investors receive information in advertisements that is accurate, balanced, timely, not misleading, and otherwise appropriate and helpful in making investment decisions. The additional information that would be required to be disclosed to investors pursuant to the collection of information provisions of the rules affected by the proposed amendments, would address these concerns regarding investor protection.

1. Rule 34b–1

Rule 34b–1, including the proposed amendments, contains collection of information requirements. The rule applies to supplemental sales literature, *i.e.,* sales literature that is preceded or accompanied by the statutory prospectus and requires the inclusion of standardized performance data in sales literature that includes performance data. Compliance with rule 34b–1 is mandatory for every registered investment company that issues supplemental sales literature. Responses to the disclosure requirements will not be kept confidential.

We estimate that approximately 37,000 responses are filed annually pursuant to rule 34b–1, and the burden per response is 2.9 hours. The proposed amendments would change rule 34b–1 only to add language to clarify the Commission's present interpretation of its rules, namely, that compliance with rule 34b–1 does not relieve the fund, underwriter, or dealer of the obligation to ensure that sales literature is not false or misleading. This added language merely confirms the present state of the law and imposes no additional burden hours.[138]

[135] See discussion in note 134, *supra.*

[136] See discussion in note 134, *supra.*

[137] Based on its analysis of data from the EDGAR filing system from 2000–2001, the Commission estimates that there are approximately 200 variable life insurace policies, with respect to which as least one post-effective amendment must be filed per year. In addition, the Commission estimates, also based on EDGAR filing data, that 300 additional post-effective amendments are filed for these variable life insurance policies each year, generally to make no-material changes to their registration statements.

[138] The secondary effect on the burden attributable to rule 34b–1 due to the proposed amendments to rule 482 is estimated to be negligible. Both before and after the proposed amendments, rule 34b–1 would require any performance data included in supplemental sales literature to be accompanied by performance data computed using the standardized formulas for advertising performance under rule 482. We

Continued

2. Rule 482

Rule 482, including the proposed amendments, contains collection of information requirements in that it permits a fund to advertise information subject to certain disclosure requirements. Compliance with rule 482 is mandatory for every fund that issues rule 482 advertisements. Responses to the disclosure requirements will not be kept confidential.

The Commission estimates that 41,484 responses are filed annually by 5,587 funds pursuant to rule 482. The burden associated with rule 482 is presently included in the collections of information for the investment company registration statement forms, but the Commission is transferring this PRA burden to a new rule 482 collection of information, with an annual burden of 225,015 hours. The proposed amendments to rule 482 would affect this total. The Commission estimates an increase of 4,060 annual burden hours, or 0.727 hours per fund, would be required to comply with the proposed amendments to rule 482, as a result of one-time switchover costs amortized over a three-year period. The Commission also estimates a decrease of 10,950 annual burden hours, or 1.96 hours per fund, resulting from the proposed amendments due to the simplification and clarification of rule 482, including the removal of the ''substance of which'' requirement.[139] The net result would be an annual decrease of approximately 6,890 (4,060 hours increase—10,950 hours decrease) hours.

D. Request for Comments

We request your comments on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609, with reference to File No. S7–17–02. Request for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–17–02, and be submitted to the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549, Attention: Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''Analysis'') has been prepared in accordance with 5 U.S.C. 603, and relates to the Commission's proposed rule and form amendments under the Securities Act of 1933 and the Investment Company Act of 1940 to provide investment companies with the ability to disclose more timely information in advertisements and to reinforce the antifraud protections that apply to investment company advertisements. The proposed amendments would implement a provision of NSMIA by eliminating the requirement in rule 482 under the Securities Act that investment company advertisements contain only information the ''substance of which'' is included in the statutory prospectus. The proposed amendments also would require enhanced disclosure in investment company advertisements and are designed to encourage advertisements that convey balanced information to prospective investors, particularly with respect to past performance. In light of the proposed amendments to rule 482, the Commission is also proposing to rescind the provisions in rule 134 under the Securities Act that apply to investment companies.

A. Reasons for, and Objectives of, Proposed Amendments

The Commission has proposed the amendments to the advertising regulations described above to achieve two separate objectives. First, the Commission intends to simplify and clarify the rules governing fund advertising. Specifically, the proposed amendments would remove the ''substance of which'' requirement of rule 482 and rescind the provisions of rule 134 that apply to investment companies, following Congress' directive in NSMIA to adopt rules or regulations allowing funds the use of a section 10(b) prospectus that may include information the substance of which is not included in the statutory prospectus.[140] We are also proposing technical amendments to reorganize and clarify the language of rule 482. These simplifying and clarifying amendments are intended to aid funds and others in understanding and complying with the advertising rules, making it easier and cheaper for funds to advertise.

Second, the Commission intends to enhance the disclosure required in rule 482 advertising. Specifically, we propose to require advertisements to (i) highlight the availability of certain additional information, such as charge and expense information and updated monthly performance figures; (ii) provide an amended warning legend; and (iii) present certain required disclosure with equal prominence as the major portion of the advertisement. We are proposing these amendments because of our concern about fund performance advertising that could create unrealistic investor expectations or mislead potential investors. The enhanced disclosure requirements are intended to encourage advertisements that are clear, easy to use, and balanced, and to make investors aware of important and timely information necessary to make informed investment decisions.

B. Legal Basis

We are proposing amendments to rule 134 pursuant to authority set forth in sections 2(a)(10) and 19(a) of the Securities Act. We are proposing amendments to rule 156 pursuant to authority set forth in section 19(a) of the

estimate that the changes in types of disclosure and presentation that would be required by the amendments to rule 482 would not affect the amount of review necessary for funds to ensure compliance with rule 34b–1. Therefore, all changes in burden associated with the proposed amendments are accounted for under the category associated with the principal rule generating the burden, *i.e.*, the new rule 482 collection of information.

[139] The estimates of the changes in the hours attributable to rule 482 are based on information supplied to the Commission staff by members of the mutual fund and variable insurance products industry.

[140] National Securities Markets Improvement Act, *supra* note 7.

Securities Act and sections 10(b) and 23(a) of the Exchange Act. We are proposing amendments to rule 482 pursuant to authority set forth in sections 5, 10(b), 19(a), and 28 of the Securities Act and sections 24(g) and 38(a) of the Investment Company Act. We are proposing amendments to rule 34b–1 pursuant to authority set forth in sections 34(b) and 38(a) of the Investment Company Act. We are proposing amendments to Form N–1A, Form N–3, Form N–4, and Form N–6 pursuant to authority set forth in sections 5, 6, 7, 10, and 19(a) of the Securities Act and sections 8, 24(a), 30, and 38 of the Investment Company Act.

C. Small Entities Subject to the Rule

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[141] Approximately 225 out of 5587 investment companies meet this definition.[142]

The Commission estimates, based on the staff's discussions with members of the fund industry, that approximately two-thirds of small entity funds do not advertise and, thus, do not incur any burdens or costs associated with rule 482. For small entity funds that do advertise, the Commission estimates an internal hour burden of approximately 80 hours per small entity fund. This represents approximately 6,000 (80 hours × 75 small entities) hours, or $246,915 (6,000 hours × $40.986 wage rate) in internal costs, for all small entities. The Commission estimates that the external cost burden associated with rule 482 for small entities, as with other funds, is negligible. To the extent small entities currently advertise, the burden and costs may affect them to a greater extent because small entities are unable to take advantage of economies of scale available to larger fund complexes.[143]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments would modify the disclosure requirements applicable to rule 482 advertisements. Advertisements would have to contain an amended warning legend, an explanation about where charges and expense information could be found, and, if performance figures are used, information about where updated performance information could be found. In addition, the required disclosure would have to be given as much prominence in the advertisement as the major portion of the advertisement. The proposed amendments would also rescind the disclosure requirements of rule 134 as they apply to funds, but we expect that this would not result in any appreciable change in the disclosure that funds make in their advertisements because present rule 134 advertisements would become rule 482 advertisements.

After assessing the proposed amendments in light of the current reporting requirements and consulting with representatives in the industry, the Commission has considered the potential effect that the proposed amendments would have on the preparation of advertisements. Without regard to the size of the entity, we estimate that the proposed amendments would result in a net decrease of 1.23 hours, or $50.41 (1.23 hours × $40.986 wage rate), per investment company per year in internal costs and a net increase of $805.67 per investment company per year in external costs.[144]

The Commission estimates some one-time switchover costs and burdens that would be imposed on all funds, but which may have a relatively greater impact on smaller firms. These costs include the costs of altering existing advertisements, including those now covered by rule 134, to comply with the new provisions of rule 482; generating performance figures on a monthly basis; and making available the updated monthly performance data by a toll-free telephone number. The costs of making updated performance data available could include expenses for computer time, legal and accounting fees, information technology staff, and additional computer and telephone equipment. However, we believe, based on consultation with a number of fund complexes, that many investment companies that presently advertise already provide performance information on a basis at least as current as monthly through these means and, therefore, that the marginal cost increases for most funds are expected to be minimal.

The Commission anticipates that the proposed amendments would also provide ongoing reductions in the compliance burden for all funds by clarifying the language of rule 482, eliminating the ''substance of which'' requirement, and consolidating fund advertising into one rule. These changes would effect savings primarily by reducing the time and money funds now spend on legal review and amending their SAIs to comply with the ''substance of which'' requirement in current rule 482.

The Commission solicits comment on the effect the proposed amendments would have on small entities.

E. Duplicative, Overlapping or Conflicting Federal Rules

There are no rules that duplicate, overlap, or conflict with the proposed amendments.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small issuers. In connection with the proposed amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small

[141] 17 CFR 270.0–10.

[142] This estimate is based on figures compiled by the Commission staff regarding investment companies registered on Form N–1A, Form N–2, Form N–3, Form N–4, and Form S–6. Form S–6 is the form currently used by insurance company separate accounts registered as unit investment trusts and that offer variable life insurance policies to register their securities under the Securities Act. It will be replaced by new Form N–6. *See* Investment Company Act Release No. 25522, *supra* note 89. In determining whether an insurance company separate account is a small entity for purposes of the Regulatory Flexibility Act, the assets of insurance company separate accounts are aggregated with the assets of their sponsoring insurance companies. Investment Company Act rule 0–10(b) [17 CFR 270.0–10(b)]. Currently, no insurance company separate account filing on Form N–3, Form N–4, or Form S–6 qualifies as a small entity.

[143] We note, however, that to the extent that the proposed amendments actually reduce the regulatory burden of advertising, small entities may be encouraged to increase their advertising activity.

[144] These figures are based on the Commission staff's discussions with several fund complexes, and represent the net of the switchover internal hour burdens (12,180 hours (or 4,060 amortized)) and external costs ($13,503,779 (or $4,501,259.67 amortized)), amortized over 3 years, and the annual internal hour burden savings (10,950), which would be attributable to the proposed amendments.

The net annual hour savings would be 6,890 hours (4,060 amortized increase—10,950 annual decrease) or 1.23 hours per investment company (6,890 hours/5,587 investment companies). The annual external costs would be $805.67 per investment company ($4,501,259.67/5,587 investment companies).

entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The proposed disclosure amendments would provide shareholders and the public with more balanced information about a fund's performance. Different disclosure requirements for small entities, such as reducing the level of disclosure that small entities would have to provide shareholders in advertising, may create the risk that shareholders would not receive balanced information about a fund's performance or would receive confusing, false, or misleading information. In addition, applying different standards for advertising by small and large funds might impede investors' ability to adequately compare funds. We believe it is important for the enhanced advertising disclosure that would be required by the proposed amendments to be provided to investors by all funds, not just funds that are not considered small entities.

The Commission also notes that current advertising requirements, and its disclosure rules in general, do not distinguish between small entities and other funds. In addition, we believe that it would be inappropriate to impose a different timetable on small entities for complying with the requirements.

The proposed amendments would also reduce the internal regulatory burden on all funds, including small entities, by eliminating the ''substance of which'' requirement from rule 482 and rescinding rule 134 provisions that apply to funds, thereby consolidating and simplifying the advertising rules. Small entities should benefit from these amendments to the same degree as other investment companies. Further clarification, consolidation, or simplification of the proposals for funds that are small entities may be inconsistent with investor protection. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context.

G. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this Analysis. Comment is specifically requested on the number of small entities that would be affected by the proposed amendments and the likely impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–17–02; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549–0102. Electronically submitted comment letters also will be posted on the Commission's Internet web site (*http://www.sec.gov*).[145]

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[146] a rule is ''major'' if it results or is likely to result in:

- An annual effect on the economy of $100 million or more;
- Aa major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

The Commission requests comment on the potential impact of the proposed amendments on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

IX. Statutory Authority

The Commission is proposing amendments to rule 134 pursuant to authority set forth in sections 2(a)(10) and 19(a) of the Securities Act [15 U.S.C. 77b(a)(10) and 77s(a)]. The Commission is proposing amendments to rule 156 pursuant to authority set forth in section 19(a) of the Securities Act [15 U.S.C. 77s(a)] and sections 10(b) and 23(a) of the Exchange Act [15 U.S.C. 78j(b) and 78w(a)]. The Commission is proposing amendments to rule 482 pursuant to authority set forth in sections 5, 10(b), 19(a), and 28 of the Securities Act [15 U.S.C. 77e, 77j(b), 77s(a), and 77z–3] and sections 24(g) and 38(a) of the Investment Company Act [15 U.S.C. 80a–24(g) and 80a–37(a)]. The Commission is proposing amendments to rule 34b–1 pursuant to authority set forth in sections 34(b) and 38(a) of the Investment Company Act [15 U.S.C. 80a–33(b) and 80a–37(a)]. The Commission is proposing amendments to Form N–1A, Form N–3, Form N–4, and Form N–6 pursuant to authority set forth in sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a)] and sections 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–29, and 80a–37].

List of Subjects

17 CFR Part 230

Advertising, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II, of the Code of Federal Regulations as follows.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for Part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.134 is amended by:

a. Removing the authority citation following § 230.134;

b. Revising the introductory text of § 230.134;

c. Removing paragraphs (a)(3)(iii), (a)(13), and (e);

d. Redesignating paragraphs (a)(3)(iv) and (a)(14) as paragraphs (a)(3)(iii) and (a)(13), respectively; and

e. In newly redesignated paragraph (a)(13)(ii), revising the reference ''(a)(14)(i)'' to read ''(a)(13)(i)''.

The revision reads as follows:

§ 230.134 Communications not deemed a prospectus.

The term *prospectus* as defined in section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)) does not include a notice,

[145] We do not edit personal, identifying information, such as names or e-mail addresses, from electronic submissions. Submit only information that you wish to make publicly available.

[146] Pub. L. No. 104–21, Title II, 110 Stat. 857 (1996).

circular, advertisement, letter, or other communication published or transmitted to any person after a registration statement has been filed if it contains only the statements required or permitted by this § 230.134. This § 230.134 does not apply to a notice, circular, advertisement, letter, or other communication relating to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a business development company as defined in section 2(a)(48) of the Investment Company Act (15 U.S.C. 80a–2(a)(48)).

* * * * *

3. Section 230.156 is amended by:

a. Removing the authority citation following § 230.156; and

b. Revising paragraph (b)(2)(i) to read as follows:

§ 230.156 Investment company sales literature.

* * * * *

(b) * * *

(2) * * *

(i) Portrayals of past income, gain, or growth of assets convey an impression of the net investment results achieved by an actual or hypothetical investment which would not be justified under the circumstances, including portrayals that omit explanations, qualifications, limitations, or other statements necessary or appropriate to make the portrayals not misleading; and

* * * * *

4. Section 230.482 is revised to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

(a) *Scope of rule.* This section applies to an advertisement or other sales material (advertisement) with respect to securities of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (1940 Act), or a business development company, that is selling or proposing to sell its securities pursuant to a registration statement that has been filed under the Act. This section does not apply to an advertisement that is excepted from the definition of prospectus by section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)), or a Profile under § 230.498. An advertisement that complies with this section, which may include information the substance of which is not included in the prospectus specified in section 10(a) of the Act (15 U.S.C 77j(a)), will be deemed to be a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)) for the purpose of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1)).

Note to paragraph (a): The fact that an advertisement complies with this section does not relieve the investment company, underwriter, or dealer of the obligation to ensure that the advertisement is not false or misleading. For guidance about factors to be weighed in determining whether statements, representations, illustrations, and descriptions contained in investment company advertisements are misleading, *see* § 230.156. In addition, an advertisement that complies with this section is subject to the legibility requirements of § 230.420.

(b) *Required disclosure.* This paragraph describes information that is required to be included in an advertisement in order to comply with this section.

(1) *Availability of additional information.* An advertisement must include a statement that:

(i) Identifies a source from which an investor may obtain a prospectus; explains that the prospectus contains more complete information about the investment company, including charges and expenses; and states that the prospectus should be read carefully before investing; or

(ii) If used with a Profile, explains that the accompanying Profile contains information about the investment company, including charges and expenses; describes the procedures for investing in the investment company; and indicates the availability of the investment company's prospectus.

(2) *Advertisements used prior to effectiveness of registration statement.* An advertisement that is used prior to effectiveness of the investment company's registration statement or the determination of the public offering price (in the case of a registration statement that becomes effective omitting information from the prospectus contained in the registration statement in reliance upon § 230.430A) must include the ''Subject to Completion'' legend required by § 230.481(b)(2).

(3) *Advertisements including performance data.* An advertisement that includes performance data of an open-end management investment company or a separate account registered under the 1940 Act as a unit investment trust offering variable annuity contracts (trust account) must include the following:

(i) A legend disclosing that the performance data quoted represents past performance; that past performance does not guarantee future results; that the investment return and principal value of an investment will fluctuate so that an investor's shares, when redeemed, may be worth more or less than their original cost; and that current performance may be lower or higher than the performance data quoted. The legend should also identify a toll-free (or collect) telephone number and, if available, a website where an investor may obtain performance data current to the most recent month-end. An advertisement for a money market fund may omit the disclosure about principal value fluctuation; and

(ii) If a sales load or any other nonrecurring fee is charged, the maximum amount of the load or fee, and if the sales load or fee is not reflected, a statement that the performance data does not reflect the deduction of the sales load or fee, and that, if reflected, the load or fee would reduce the performance quoted.

(4) *Money market funds.* An advertisement for an investment company that holds itself out to be a money market fund must include the following statement:

An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the Fund.

A money market fund that does not hold itself out as maintaining a stable net asset value may omit the second sentence of this statement.

(5) *Presentation.* In a print advertisement, the statements required by paragraphs (b)(1) through (b)(4) of this section must be presented in a size type at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisement. In a radio or television advertisement, the statements required by paragraphs (b)(1) through (b)(4) of this section must be given emphasis equal to that used in the major portion of the advertisement. The statements required by paragraph (b)(3) of this section must be presented in close proximity to the performance data, and, in a print advertisement, must be presented in the body of the advertisement and not in a footnote.

(6) *Commission legend.* An advertisement that complies with this section need not contain the Commission legend required by § 230.481(b)(1).

(c) *Use of applications.* An advertisement that complies with this section may not contain or be accompanied by any application by which a prospective investor may invest in the investment company, except that:

(1) *Variable annuity and variable life insurance contracts.* A prospectus meeting the requirements of section 10(a) of the Act (15 U.S.C. 77j(a)) by

which a unit investment trust offers variable annuity or variable life insurance contracts may contain a contract application although the prospectus includes information about an investment company in which the unit investment trust invests that, pursuant to this section, is deemed a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)); and

(2) *Profile.* An advertisement that complies with this section may be used with a Profile that includes, or is accompanied by, an application to purchase shares of the investment company as permitted under § 230.498.

(d) *Performance data for non-money market funds.* In the case of an open-end management investment company or a trust account (other than a money market fund referred to in paragraph (e) of this section), any quotation of the company's performance contained in an advertisement shall be limited to quotations of:

(1) *Current yield.* A current yield that:

(i) Is based on the methods of computation prescribed in Form N–1A (§§ 239.15A and 274.11A of this chapter), N–3 (§§ 239.17a and 274.11b of this chapter), or N–4 (§§ 239.17b and 274.11c of this chapter);

(ii) Is accompanied by quotations of total return as provided for in paragraph (d)(3) of this section;

(iii) Is set out in no greater prominence than the required quotations of total return; and

(iv) Adjacent to the quotation and with no less prominence than the quotation, identifies the length of and the date of the last day in the base period used in computing the quotation.

(2) *Tax-equivalent yield.* A tax-equivalent yield that:

(i) Is based on the methods of computation prescribed in Form N–1A (§§ 239.15A and 274.11A of this chapter), N–3 (§§ 239.17a and 274.11b of this chapter), or N–4 (§§ 239.17b and 274.11c of this chapter);

(ii) Is accompanied by quotations of yield as provided for in paragraph (d)(1) of this section and total return as provided for in paragraph (d)(3) of this section;

(iii) Is set out in no greater prominence than the required quotations of yield and total return;

(iv) Relates to the same base period as the required quotation of yield; and

(v) Adjacent to the quotation and with no less prominence than the quotation, identifies the length of and the date of the last day in the base period used in computing the quotation.

(3) *Average annual total return.* Average annual total return for one, five, and ten year periods, except that if the company's registration statement under the Act (15 U.S.C. 77a *et seq.*) has been in effect for less than one, five, or ten years, the time period during which the registration statement was in effect is substituted for the period(s) otherwise prescribed. The quotations must:

(i) Be based on the methods of computation prescribed in Form N–1A (§§ 239.15A and 274.11A of this chapter), N–3 (§§ 239.17a and 274.11b of this chapter), or N–4 (§§ 239.17b and 274.11c of this chapter);

(ii) Be current to the most recent calendar quarter ended prior to the submission of the advertisement for publication;

(iii) Be set out with equal prominence; and

(iv) Adjacent to the quotation and with no less prominence than the quotation, identify the length of and the last day of the one, five, and ten year periods.

(4) *After-tax return.* For an open-end management investment company, average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption) for one, five, and ten year periods, except that if the company's registration statement under the Act (15 U.S.C. 77a *et seq.*) has been in effect for less than one, five, or ten years, the time period during which the registration statement was in effect is substituted for the period(s) otherwise prescribed. The quotations must:

(i) Be based on the methods of computation prescribed in Form N–1A (§§ 239.15A and 274.11A of this chapter);

(ii) Be current to the most recent calendar quarter ended prior to the submission of the advertisement for publication;

(iii) Be accompanied by quotations of total return as provided for in paragraph (d)(3) of this section;

(iv) Include both average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption);

(v) Be set out with equal prominence and be set out in no greater prominence than the required quotations of total return; and

(vi) Adjacent to the quotations and with no less prominence than the quotations, identify the length of and the last day of the one, five, and ten year periods.

(5) *Other performance measures.* Any other historical measure of company performance (not subject to any prescribed method of computation) if such measurement:

(i) Reflects all elements of return;

(ii) Is accompanied by quotations of total return as provided for in paragraph (d)(3) of this section;

(iii) In the case of any measure of performance adjusted to reflect the effect of taxes, is accompanied by quotations of total return as provided for in paragraph (d)(4) of this section;

(iv) Is set out in no greater prominence than the required quotations of total return; and

(v) Adjacent to the measurement and with no less prominence than the measurement, identifies the length of and the last day of the period for which performance is measured.

(e) *Performance data for money market funds.* In the case of a money market fund:

(1) *Yield.* Any quotation of the money market fund's yield in an advertisement shall be based on the methods of computation prescribed in Form N–1A (§§ 239.15A and 274.11A of this chapter), N–3 (§§ 239.17a and 274.11b of this chapter), or N–4 (§§ 239.17b and 274.11c of this chapter) and may include:

(i) A quotation of current yield that, adjacent to the quotation and with no less prominence than the quotation, identifies the length of and the date of the last day in the base period used in computing that quotation;

(ii) A quotation of effective yield if it appears in the same advertisement as a quotation of current yield and each quotation relates to an identical base period and is presented with equal prominence; or

(iii) A quotation or quotations of tax-equivalent yield or tax-equivalent effective yield if it appears in the same advertisement as a quotation of current yield and each quotation relates to the same base period as the quotation of current yield, is presented with equal prominence, and states the income tax rate used in the calculation.

(2) *Total return.* Accompany any quotation of the money market fund's total return in an advertisement with a quotation of the money market fund's current yield under paragraph (e)(1)(i) of this section. Place the quotations of total return and current yield next to each other, in the same size print, and if there is a material difference between the quoted total return and the quoted current yield, include a statement that the yield quotation more closely reflects the current earnings of the money market fund than the total return quotation.

(f) *Advertisements that make tax representations.* An advertisement for an open-end management investment company (other than a company that is permitted under § 270.35d–1(a)(4) of

this chapter to use a name suggesting that the company's distributions are exempt from federal income tax or from both federal and state income tax) that represents or implies that the company is managed to limit or control the effect of taxes on company performance must accompany any quotation of the company's performance permitted by paragraph (d) of this section with quotations of total return as provided for in paragraph (d)(4) of this section.

(g) *Timeliness of performance data.* All performance data contained in any advertisement must be as of the most recent practicable date considering the type of investment company and the media through which the data will be conveyed, except that any advertisement containing total return quotations will be considered to have complied with this paragraph provided that:

(1) The total return quotations are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication; and

(2) Total return quotations current to the most recent month ended three calendar days prior to the date of use are provided at the toll-free (or collect) telephone number identified pursuant to paragraph (b)(3)(i).

(h) *Filing.* An advertisement that complies with this section need not be filed as part of the registration statement filed under the Act.

Note to Paragraph (h): These advertisements, unless filed with NASD Regulation, Inc., are required to be filed in accordance with the requirements of § 230.497.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

5. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

6. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1, *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

7. Section 270.34b–1 is amended by:

a. Revising the reference ''(a)(7) of § 230.482'' in paragraph (a) to read ''(b)(4) of § 230.482'';

b. Revising the reference ''(a)(6) of § 230.482'' in paragraph (b)(1)(i) to read ''(b)(3) of § 230.482'';

c. Revising the reference ''(d)(1)(i) of § 230.482'' in paragraph (b)(1)(ii)(A) to read ''(e)(1)(i) of § 230.482'';

d. Revising the reference ''§ 230.482(d)(1)(iii)'' in paragraph (b)(1)(ii)(B) to read ''§ 230.482(e)(1)(iii)';

e. Revising the reference ''(d)(1)(i) of § 230.482'' in the first sentence of paragraph (b)(1)(ii)(C) to read ''(e)(1)(i) of § 230.482'';

f. Revising the reference ''(e)(3) of § 230.482'' in paragraph (b)(1)(iii)(A) to read ''(d)(3) of § 230.482'';

g. Revising the reference ''(e)(4) of § 230.482'' in paragraph (b)(1)(iii)(B) to read ''(d)(4) of § 230.482'';

h. Revising the reference ''(e)(4) of § 230.482'' in paragraph (b)(1)(iii)(C) to read ''(d)(4) of § 230.482'';

i. Revising the reference ''(e)(1) of § 230.482'' in paragraph (b)(1)(iii)(D) to read ''(d)(1) of § 230.482'';

j. Revising the references ''(e)(2)'' and ''(e)(1) of § 230.482'' in paragraph (b)(1)(iii)(E) to read ''(d)(2)'' and ''(d)(1) of § 230.482'', respectively;

k. Revising the reference ''(e)(3)(ii), (e)(4)(ii)'' in paragraph (b)(3) to read ''(d)(3)(ii), (d)(4)(ii)''; and

l. Adding a note following the introductory text of § 270.34b–1 to read as follows:

§ 270.34b–1 Sales literature deemed to be misleading.

* * * * *

Note to Introductory Text of § 270.34b–1: The fact that the sales literature includes the information specified in paragraphs (a) and (b) of this section does not relieve the investment company, underwriter, or dealer of the obligation to ensure that the sales literature is not false or misleading. For guidance about factors to be weighed in determining whether statements, representations, illustrations, and descriptions contained in investment company sales literature are misleading, *see* § 230.156 of this chapter.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

8. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

Note: The text of Forms N–1A, N–3, N–4, and N–6 does not, and these amendments will not, appear in the *Code of Federal Regulations.*

9. Item 21 of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. Revising the introductory text of paragraphs (a) and (b); and

b. Removing paragraphs (a)(5) and (b)(7), to read as follows:

Form N–1A

* * * * *

Item 21. Calculation of Performance Data

(a) *Money Market Funds.* Yield quotation(s) for a Money Market Fund included in the prospectus should be calculated according to paragraphs (a)(1)–(4).

* * * * *

(b) *Other Funds.* Performance information included in the prospectus should be calculated according to paragraphs (b)(1)–(6).

* * * * *

10. Item 4 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

a. Removing Item 4(c); and

b. Redesignating Item 4(d) as Item 4(c).

11. Item 25 of Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

a. Removing Instruction 5 to paragraph (a); and

b. Revising paragraphs (a) and (b), and Instruction 6 to paragraph (b)(i), to read as follows:

Form N–3

* * * * *

Item 25. Calculation of Performance Data

(a) *Money Market Accounts.* Yield quotation(s) included in the prospectus for an account or sub-account that holds itself out as a ''money market'' account or sub-account should be calculated according to paragraphs (a)(i)–(ii).

(i) *Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet of the Registrant included in the registration statement, calculate the yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one accumulation unit of the account or sub-account at the beginning of the period, subtracting a hypothetical charge reflecting deductions from contractowner accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting

yield figure carried to at least the nearest hundredth of one percent.

(ii) *Effective Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet of the Registrant included in the registration statement, calculate the effective yield, carried to at least the nearest hundredth of one percent, by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one accumulation unit of the account or sub-account at the beginning of the period, subtracting a hypothetical charge reflecting deductions from contractowner accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then compounding the base period return by adding 1, raising the sum to a power equal to 365 divided by 7, and subtracting 1 from the result, according to the following formula:

Effective Yield = $[(\text{Base Period Return} + 1)^{365/7}] - 1$.

Instructions:

* * * * *

(b) *Other Accounts.* Performance information included in the prospectus should be calculated according to paragraphs (b)(i)–(iii).

(i) *Average Annual Total Return Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet of the Registrant included in the registration statement, calculate the average annual total return by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods that would equate the initial amount invested to the ending redeemable value, according to the following formula:

$P(1+T)^n = ERV$

Where:

P = A hypothetical initial payment of $1,000

T = Average annual total return

n = Number of years

ERV = Ending redeemable value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion).

Instructions:

* * * * *

6. Total return information in the prospectus need only be current to the end of the Registrant's most recent fiscal year.

(ii) *Yield Quotation.* Based on a 30-day (or one month) period ended on the date of the most recent balance sheet of the Registrant included in the registration statement, calculate yield by dividing the net investment income per accumulation unit earned during the period by the maximum offering price per unit on the last day of the period, according to the following formula:

$$\text{YIELD} = 2\left[\left(\frac{a-b}{cd}+1\right)^6 - 1\right]$$

Where:

a = Dividends and interest earned during the period.

b = Expenses accrued for the period (net of reimbursements).

c = The average daily number of accumulation units outstanding during the period.

d = The maximum offering price per accumulation unit on the last day of the period.

Instructions:

* * * * *

(iii) *Non-Standardized Performance Quotation.* A Registrant may calculate performance using any other historical measure of performance (not subject to any prescribed method of computation) if the measurement reflects all elements of return.

* * * * *

12. Item 4 of Form N–4 (referenced in §§ 239.17b and 274.11c) is amended by:

a. Removing Item 4(b); and

b. Redesignating Item 4(c) as Item 4(b).

13. Item 21 of Form N–4 (referenced in §§ 239.17b and 274.11c) is amended by:

a. Removing Instruction 5 to paragraph (a); and

b. Revising paragraphs (a) and (b), and Instruction 6 to paragraph (b)(i), to read as follows:

Form N–4

* * * * *

Item 21. Calculation of Performance Data

(a) *Money Market Funded Sub-Accounts.* Yield quotation(s) included in the prospectus for an account or sub-account that holds itself out as a ''money market'' account or sub-account should be calculated according to paragraphs (a)(i)–(ii).

(i) *Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet of the Registrant included in the registration statement, calculate the yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one accumulation unit of the account or sub-account at the beginning of the period, subtracting a hypothetical charge reflecting deductions from contractowner accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to at least the nearest hundredth of one percent.

(ii) *Effective Yield Quotation.* Based on the 7 days ended on the date of the most recent balance sheet of the Registrant included in the registration statement, calculate the effective yield, carried to at least the nearest hundredth of one percent, by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one accumulation unit of the account or sub-account at the beginning of the period, subtracting a hypothetical charge reflecting deductions from contractowner accounts, and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then compounding the base period return by adding 1, raising the sum to a power equal to 365 divided by 7, and subtracting 1 from the result, according to the following formula:

Effective Yield = $[(\text{Base Period Return} + 1)^{365/7}] - 1$.

Instructions:

* * * * *

(b) *Other Sub-Accounts.* Performance information included in the prospectus should be calculated according to paragraphs (b)(i)–(iii).

(i) *Average Annual Total Return Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet of the Registrant included in the registration statement, calculate the average annual total return by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods that would equate the initial amount invested to the ending redeemable value, according to the following formula:

$P(1+T)^n = ERV$

Where:

P = A hypothetical initial payment of $1,000

T = Average annual total return

n = Number of years

ERV = Ending redeemable value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion).

Instructions:

* * * * *

6. Total return information in the prospectus need only be current to the end of the Registrant's most recent fiscal year.

(ii) *Yield Quotation.* Based on a 30-day (or one month) period ended on the date of the most recent balance sheet of the Registrant included in the registration statement, calculate yield by dividing the net investment income per accumulation unit earned during the period by the maximum offering price per unit on the last day of the period, according to the following formula:

$$YIELD = 2\left[\left(\frac{a-b}{cd}+1\right)^{6}-1\right]$$

Where:

a = Net investment income earned during the period by the portfolio company attributable to shares owned by the sub-account.

b = Expenses accrued for the period (net of reimbursements).

c = The average daily number of accumulation units outstanding during the period.

d = The maximum offering price per accumulation unit on the last day of the period.

Instructions:

* * * * *

(iii) *Non-Standardized Performance Quotation.* A Registrant may calculate performance using any other historical measure of performance (not subject to any prescribed method of computation) if the measurement reflects all elements of return.

* * * * *

14. General Instruction B.2.(b) of Form N–6 (referenced in §§ 239.17c and 274.11d) is amended by revising the reference ''Items 27 (c), (k), (l), (n), and (o)'' to read ''Items 26 (c), (k), (l), (n), and (o)''.

15. Item 25 of Form N–6 (referenced in §§ 239.17c and 274.11d) is removed.

16. Form N–6 (referenced in §§ 239.17c and 274.11d) is further amended by:

a. Redesignating Items 26 through 34 as Items 25 though 33;

b. Revising the reference ''Item 26'' in paragraph (j) of newly redesignated Item 25 to read ''Item 25'' and

c. Revising the reference ''Item 26'' in paragraphs (l) and (m) of newly redesignated Item 26 to read ''Item 25''.

By the Commission.

Dated: May 17, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–12893 Filed 5–23–02; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Friday,
May 24, 2002

Part IV

Commodity Futures Trading Commission

Securities and Exchange Commission

17 CFR Parts 41 and 240
Cash Settlement and Regulatory Halt Requirements for Security Futures Products; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 41

RIN 3038–AB86

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–45956; File No. S7–15–01]

RIN 3235–AI24

Cash Settlement and Regulatory Halt Requirements for Security Futures Products

AGENCIES: Commodity Futures Trading Commission and Securities and Exchange Commission.

ACTION: Joint final rule.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'') and the Securities and Exchange Commission (''SEC'') (collectively ''Commissions'') are adopting a new rule generally to require that the final settlement price for each cash-settled security futures product fairly reflect the opening price of the underlying security or securities, and that trading in any security futures product halt when a regulatory halt is instituted with respect to a security or securities underlying the security futures product by the national securities exchange or national securities association listing the security. The rule adopted today would set forth more specifically how the exchange's or association's rules can satisfy provisions added to the Commodity Exchange Act (''CEA'') and the Securities Exchange Act of 1934 (''Exchange Act'') by the Commodity Futures Modernization Act of 2000 (''CFMA''). The Commissions are also issuing an interpretation of the statutory requirement under the CEA and the Exchange Act that procedures be put in place for coordinated surveillance among the markets trading security futures products and any market trading any security underlying the security futures products or any related security.

EFFECTIVE DATE: The rules are effective June 24, 2002.

FOR FURTHER INFORMATION CONTACT:

CFTC

Richard A. Shilts, Acting Director, Division of Economic Analysis, at (202) 418–5275; Thomas M. Leahy, Jr., Financial Instruments Unit Chief, Division of Economic Analysis, at (202) 418–5278; or Gabrielle A. Sudik, Attorney, Office of General Counsel, at (202) 418–5120, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. E-mail: (*RShilts@cftc.gov*), (*TLeahy@cftc.gov*), or (*GSudik@cftc.gov*).

SEC

Jerry Carpenter, Assistant Director, at (202) 942–4187; Terri Evans, Assistant Director, at (202) 942–4162; Alton Harvey, Office Head, at (202) 942–4167; Michael Gaw, Special Counsel, at (202) 942–0158; Cyndi Nguyen, Attorney, at (202) 942–4163; and Michael Rae, Attorney, at (202) 942–0785, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: The CFTC is adopting Rule 41.1(j) through (l), 41.25(a)(2), 41.25(b), and 41.25(d) under the CEA.[1] The SEC is adopting Rule 6h–1 under the Exchange Act.[2]

Table of Contents

I. Introduction

The CFMA [3] authorizes the trading of futures on individual stocks and narrow-based security indexes (collectively, ''security futures '').[4] The CFMA defines security futures products as ''securities'' under the Exchange Act,[5] the Securities Act of 1933,[6] the Investment Company Act of 1940,[7] and the Investment Advisers Act of 1940,[8] and as contracts of sale for future delivery of a single security or of a narrow-based security index or options thereon under the CEA.[9] Accordingly, the regulatory framework established by the CFMA for the markets and intermediaries trading security futures

[1] Rule 41.1(j)–(l), 17 CFR 41.1, hereinafter referred to as CFTC Rule 41.1; 41.25(a)(2), 17 CFR 41.25(a)(2), hereinafter referred to as CFTC Rule 41.25(a)(2); 41.25(b), 17 CFR 41.25(b), hereinafter referred to as CFTC Rule 41.25(b); and 41.25(d), 17 CFR 41.25(d), hereinafter referred to as CFTC Rule 41.25(d).

[2] Rule 6h–1, 17 CFR 240.6h–1, hereinafter referred to as SEC Rule 6h–1.

[3] Pub. L. No. 106–554, Appendix E, 114 Stat. 2763.

[4] After December 21, 2003, the Commissions may jointly determine to permit trading of puts, calls, straddles, options, or privileges on security futures (along with security futures, collectively referred to as ''security futures products''). *See* Section 2(a)(1)(D)(iii) of the CEA, 7 U.S.C. 2(a)(1)(D)(iii); Section 6(h)(6) of the Exchange Act, 15 U.S.C. 78f(h)(6).

[5] *See* Section 3(a)(10) of the Exchange Act, 15 U.S.C. 78c(a)(10).

[6] *See* Section 2(a)(1) of the Securities Act of 1933, 15 U.S.C. 77b(a)(1).

[7] *See* Section 2(a)(36) of the Investment Company Act of 1940, 15 U.S.C. 80a–2(a)(36).

[8] *See* Section 202(a)(18) of the Investment Advisers Act of 1940, 15 U.S.C. 80b–2(a)(18).

[9] *See* Section 1a(31) of the CEA, 7 U.S.C. 1a(31).

products provides the SEC and the CFTC with joint jurisdiction.

Under the Exchange Act, it is unlawful for any person to effect transactions in security futures products that are not listed on a national securities exchange [10] or on a national securities association registered pursuant to Section 15A(a) of the Exchange Act.[11] In addition, Section 6(h)(2) of the Exchange Act [12] provides that such an exchange or association may trade only those security futures products that conform with listing standards filed by the exchange or association with the SEC under Section 19(b) of the Exchange Act [13] and that meet certain criteria specified in Section 2(a)(1)(D)(i) of the CEA [14] and the standards and conditions enumerated in Section 6(h)(3) of the Exchange Act.[15]

In particular, the CEA and the Exchange Act stipulate that the listing standards of an exchange or association trading security futures products shall, among other things, require that trading in the security futures product not be readily susceptible to manipulation of the price of such security futures products, nor to causing or being used in the manipulation of the price of any underlying security or option thereon.[16] In addition, listing standards must require that the market on which the security futures product trades has in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded.[17]

Accordingly, the Commissions proposed amendments to Rule 41.1 and Rule 41.25 under the CEA, and new Rule 6h–1 under the Exchange Act to generally provide that (i) the final settlement price for each cash-settled security futures product fairly reflect the opening price of the underlying security or securities, and (ii) the listing standards of national securities exchanges and national securities associations trading security futures products establish a halt in trading in any security futures product when the national securities exchange or national securities association listing the security institutes a regulatory halt with respect to a security or securities underlying the security futures product.[18] In response to the Proposing Release, the Commissions received eight comment letters.[19] As discussed further below, the Commissions are adopting the rule substantially as proposed, with slight modifications in response to recommendations by commenters.

II. Discussion

A. Settlement Prices for Cash-Settled Security Futures Products

1. Background

All currently traded index futures and options are cash-settled. When stock index futures and options began trading in the mid-1980s, virtually all of these products used closing-price settlement procedures. Closing-price settlement procedures in index futures and options generally base the index settlement price on the execution prices from the last regular session trades in the underlying securities. The cash settlement provisions of stock index futures and options contracts facilitated the growth of sizeable index arbitrage activities by firms and professional traders and made it relatively easy for arbitrageurs to buy or sell the underlying stocks at or near the market close on expiration Fridays [20] in order to ''unwind'' arbitrage-related positions. These types of unwinding programs at the close on expiration Fridays often severely strained the liquidity of the securities markets.

Regulators and self-regulators were concerned that the liquidity constraints faced by the securities markets to accommodate expiration-related buy or sell programs at the market close on expiration Fridays could exacerbate ongoing market swings during an expiration and could provide opportunities for entities to anticipate these pressures and enter orders as part of manipulative or abusive trading practices designed to artificially drive up or down share prices. To reduce such expiration-related strains on market liquidity, markets trading the most actively-traded futures contracts and many stock index option contracts moved to opening-price settlement procedures. As discussed in the Proposing Release, opening-price settlement procedures offered several features that enabled the securities

[10] Section 6(g) of the Exchange Act, 15 U.S.C. 78f(g), allows a designated contract market under Section 5 of the CEA, 7 U.S.C. 7, or a registered derivatives transaction execution facility under Section 5a of the CEA, 7 U.S.C. 7a, to register as a national securities exchange solely for the purpose of trading security futures products (''Security Futures Product Exchange''). *See* Securities Exchange Act Release No. 44692 (August 13, 2001), 66 FR 43721 (August 20, 2001) (adopting, in part, requirements for designated contract markets and registered derivatives transaction execution facilities to register as national securities exchanges). By definition, the phrase ''national securities exchange'' encompasses Security Futures Product Exchanges. For simplicity, the text of this release refers to national securities exchanges and national securities associations. The CFTC's rules in Section VII of this release, however, by their terms, apply to designated contract markets and registered derivatives transaction execution facilities.

[11] 15 U.S.C. 78*o*–3(a).

[12] 15 U.S.C. 78f(h)(2).

[13] 15 U.S.C. 78s(b).

[14] 7 U.S.C. 2(a)(1)(D)(i).

[15] 15 U.S.C. 78f(h)(3).

[16] *See* Section 2(a)(1)(D)(i)(VII) of the CEA, 7 U.S.C. 2(a)(1)(D)(i)(VII); Section 6(h)(3)(H) of the Exchange Act, 15 U.S.C. 78f(h)(3)(H).

[17] *See* Section 2(a)(1)(D)(i)(X) of the CEA, 7 U.S.C. 2(a)(1)(D)(i)(X); Section 6(h)(3)(K) of the Exchange Act, 15 U.S.C. 78f(h)(3)(K). Before a national securities exchange or national securities association lists or trades security futures products, it is required to file, pursuant to Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b), a proposed rule change with the SEC establishing listing standards that comply with Section 6(h)(3) of the Exchange Act, 15 U.S.C. 78f(h)(3). Generally, a national securities exchange registered under Section 6(a) of the Exchange Act, 15 U.S.C. 78f(a), or a national securities association registered under Section 15A(a) of the Exchange Act, 15 U.S.C. 78*o*–3(a), must file proposed rule changes with the SEC pursuant to Section 19(b)(1) of the Exchange Act, 15 U.S.C. 78s(b)(1), for notice, comment, and SEC approval, prior to implementation, unless the rule is otherwise permitted to become effective pursuant to Section 19(b)(3) of the Exchange Act, 15 U.S.C. 78s(b)(3). A Security Futures Product Exchange or a national securities association registered under Section 15A(k) of the Exchange Act, 15 U.S.C. 78*o*–3(k), must generally submit, pursuant to Section 19(b)(7) of the Exchange Act, 15 U.S.C. 78s(b)(7), proposed rule changes relating to certain enumerated matters, including listing standards. *See* 17 CFR 240.19b–7.

[18] *See* Securities Exchange Act Release No. 44743 (August 24, 2001), 66 FR 45904 (August 30, 2001) (''Proposing Release'').

[19] *See* letters to Jean A. Webb, Secretary, CFTC, and Jonathan G. Katz, Secretary, SEC, from, or on behalf of: Joanne Moffic-Silver, General Counsel, Chicago Board Options Exchange, dated October 1, 2001 (''CBOE Letter''); David J. Vitale, President and Chief Executive Officer, Chicago Board of Trade, dated October 1, 2001 (''CBOT Letter''); James J. McNulty, President and Chief Executive Officer, Chicago Mercantile Exchange, Inc., dated October 1, 2001 (''CME Letter''); Jonathon Barton, Chairman, Futures Industry Association/Securities Industry Association Steering Committee on Security Futures, dated April 4, 2002 (''FIA/SIA Steering Committee Letter''); James E. Buck, Senior Vice President and Secretary, New York Stock Exchange, Inc., dated October 19, 2001 (''NYSE Letter''); William H. Navin, Executive Vice President and General Counsel, the Options Clearing Corporation, dated October 3, 2001 (''OCC Letter''); Joel Greenberg, Managing Director, Susquehanna International Group, LLP, dated October 17, 2001 (''SIG Letter''); and Larry Coury, Silvia Madrid, Laura Murias, Mike Periera, Vivek Sahota, Benjamin Sparks, Adrian Spirollari, and Wallace Truesdale, Students at Fordham University School of Law, dated October 1, 2001 (''Students Letter''). In addition to the comment letters received on the Proposing Release, the Commissions reviewed three comment letters received by the CFTC on its separate proposal regarding full membership in the Intermarket Surveillance Group. *See infra* discussion at Section II.C., Commissions' Interpretation of Statutory Requirements for Coordinated Surveillance.

[20] The term ''expiration Fridays'' refers to the third Friday of each month that marks the expiration date for that month's individual stock options, stock index options, and stock index futures contracts. On the expiration date, options and futures contracts cease to exist. Some stock index futures and options expire on a quarterly basis, with their expiration Friday occurring on the third Friday of the last month of the quarter (March, June, September, and December).

markets to better handle expiration-related unwinding programs.

2. Proposed Rule for Settlement Prices

In view of the experience gained with settlements in cash-settled stock index futures and options in the 1980s and in light of the potential for manipulation of the underlying securities markets, the Commissions proposed that security futures products that specify cash settlement in lieu of physical delivery use a final settlement price that fairly reflected the opening price of the underlying security or securities as the basis for cash settling positions at contract expiration.[21]

The Commissions' proposal also required that, if an opening price for an underlying security or securities was not readily available, the final settlement price of the overlying cash-settled security futures product had to fairly reflect the price of the underlying security or securities during its most recent regular trading session. The Commissions' proposal provided exchanges and associations with some discretion to implement this general rule. Finally, the proposal explicitly permitted the Commissions to grant a national securities exchange or national securities association an exemption from the above requirements.

3. Final Rule

a. Final Settlement Price for Cash-Settled Security Futures Products Must Fairly Reflect the Opening Price

The Commissions are adopting the requirement as proposed that the final settlement price of a cash-settled security futures product fairly reflect the opening price of the underlying security or securities, if the opening price is readily available.[22]

Several commenters generally supported this aspect of the proposal.[23] One commenter stated that cash-settled security futures products should be settled based on opening prices of the underlying securities because cash-settled index options already are required to settle in the same manner.[24] A second commenter advocated opening price settlement because closing-price settlement procedures for futures and options products in the 1980s ''strained the liquidity of the securities markets and raised concerns about opportunities for manipulative or abusive trading practices.'' [25] This commenter believed that, with the increased use of opening-price settlement, specialists are better able to handle expiration-related unwinding programs because there are well-developed opening procedures to disseminate price indications in an orderly manner and because specialists have the remainder of the session to trade out of any position imbalances acquired at the opening.

A third commenter noted that the migration in 1987 from closing price to opening price settlement on its S&P 500 and other futures contracts ''was largely in response to the fact that Friday afternoon settlements—which corresponded to existing practices for listed options expirations—exposed NYSE specialists to large information-less market-on-close orders without an adequate mechanism to cope.''[26] Nevertheless, this commenter pointed out potential problems with the proposed approach. It stated, for example, that the openings of all securities do not occur simultaneously and, therefore, calculation of an index must be based on non-synchronous transaction prices. This commenter also noted that a volume-weighted average transaction price over a short time interval has evolved into an industry standard for determining final settlement prices for futures based on securities trading on decentralized markets, such as Nasdaq. In response to the foregoing, the Commissions note that the rule being adopted today does not mandate that a particular methodology be used to derive an opening price. A national securities exchange or national securities association is, therefore, free to develop its own methodology for determining final settlement prices, provided that the result ''fairly reflects'' the opening price.[27]

The same commenter also stated that the Commissions' proposal could create a discrepancy between security futures products based on narrow-based security indexes and other derivative products based on the same indexes: while the former would be required to settle using opening prices, the latter are subject to no such requirement.[28] Another commenter noted that the option on the S&P 100 index (the ''OEX'' option) still employs closing-price settlement and called upon the Commissions to bring OEX into line with the opening-price settlement procedures now being adopted.[29]

The Commissions do not believe it is necessary or appropriate at this time to mandate opening settlement procedures for all options and futures. As the Commissions noted in the Proposing Release, CBOE believed that the closing price settlement procedures were appropriate for OEX because these options were used primarily by retail investors and were not actively used in the types of index arbitrage unwinding programs that had strained the liquidity of the securities markets at the close on expiration.[30] Further, the Commissions note that the vast majority of options do use opening-price settlement procedures;[31] therefore, the rule being adopted today is consistent with that general practice.[32]

One commenter also did not believe that the decision to employ opening- rather than closing-price procedures should be based on a perceived threat of increased manipulative activity, arguing that improvements in audit trails, record-keeping practices, and inter-exchange cooperation have greatly increased the ability to detect and punish manipulative activity.[33] The Commissions agree that these enhancements have increased the ability of regulators to detect and punish manipulative trading activity. Nevertheless, the Commissions believe that it is appropriate to take steps that reduce not merely the incentive, but also the ability to manipulate the market. For example, one commenter described its implementation of special closing procedures to reduce the scope for end-of-day manipulation, while stating that the use of opening prices would obviate the need for these special closing procedures.[34] This commenter also noted that opening-price settlement decreases the likelihood of price distortions not brought about by manipulative intent, such as human

[21] *See* Proposing Release, *supra* note 18.

[22] CFTC Rule 41.25(b)(1) and SEC Rule 6h–1(b)(1). The CFTC is adopting one technical change to CFTC Rule 41.25(b). *See* discussion *infra* at II.A.3.a.i., CFTC Technical Amendment.

[23] *See* CBOE Letter, CBOT Letter, and NYSE Letter.

[24] *See* CBOE Letter.

[25] *See* NYSE Letter.

[26] *See* CME Letter.

[27] Any rule change proposed by a national securities exchange or national securities association to establish listing standards for security futures products, including methodologies for determining final settlement prices, would have to be filed with the SEC pursuant to Section 19 of the Exchange Act, 15 U.S.C. 78s, and the rules thereunder. *See supra* note 10 and accompanying text. Rule changes should also be submitted to the CFTC in accordance with CFTC Rule 41.24, 17 CFR 41.24.

[28] *See* CME Letter.

[29] *See* NYSE Letter.

[30] For example, the OCC indicated that for the month of November 2001, the dollar amount of premiums settled in SPX options was over 12 times larger than that for OEX options. Both indexes are capitalization-based indexes from Standard & Poor's.

[31] *See* Proposing Release, *supra* note .

[32] If the circumstances so warrant, the SEC may in the future consider requiring all cash-settled options to use opening-price settlement procedures.

[33] *See* CME Letter.

[34] *See* NYSE Letter.

error, that can significantly affect the closing prices of securities and their overlying indexes, because the markets have no time before the closing to correct such errors. The Commissions believe that market distortions—whether caused by manipulation, human error, or difficulties in balancing buy- and sell-side interest—are more likely to occur in an environment in which closing-price settlement of derivative products is used, and that the potential for these distortions exists to a far lesser degree at the opening.[35]

i. CFTC Technical Amendment

The CFTC notes one technical change to the text of CFTC Rule 41.25(b). In an earlier rulemaking, the CFTC adopted an introductory paragraph that required that the cash settlement price of security futures products must be ''reliable and acceptable, be reflective of prices in the underlying securities market and be not readily susceptible to manipulation.'' [36] The CFTC included this language in the earlier rulemaking to reflect the CFTC's longstanding policy regarding the standards for cash-settlement of futures contracts, which are set forth in the CFTC's Guideline No. 1.[37] The CFTC also included this language in the Proposing Release for the present rulemaking.[38] In the final rules published today, the CFTC has decided to eliminate this introductory paragraph because the requirements of the paragraph are embodied in the remainder of the Rule 41.25(b) and in other rules in Part 41.

The requirements that the cash settlement price must be reliable, acceptable and reflect the prices in the underlying securities markets are embodied in CFTC Rules 41.25(b)(1) and (2). These rules require that cash settlement prices be based on the opening price of a security futures product's underlying security or securities, or, if the opening price for one or more securities is not readily available, the final settlement price of the security futures products must fairly reflect the price of the underlying security or securities during the most recent regular trading session for such securities or the next available opening price. Based on prior analyses and for reasons discussed in the proposing release, the CFTC previously has determined that opening prices represent reliable indicators of the values of securities and thus are acceptable for hedging of securities' positions. In addition, opening prices are established under procedures designed to ensure that the prices are reflective of prices in the underlying securities market. Finally, the requirement that the cash settlement price not be readily susceptible to manipulation is embodied in CFTC Rule 41.22(f), which states, ''Trading in the security futures products is not readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities, consistent with the conditions for trading of § 41.25[.]'' [39]

b. Definitions of ''Opening Price'' and ''Regular Trading Session''

The Commissions are adopting the definition of ''regular trading session'' as proposed.[40] However, in response to comments, the Commissions have modified the definition of ''opening price'' by clarifying that, if a security is not listed on a national securities exchange or a national securities association, the opening price shall be the price at which a security opened for trading, or a price that fairly reflects the price at which a security opened for trading, on the primary market for the security.

The Commissions proposed to define ''opening price'' as ''the price at which a security opened for trading, or a price that fairly reflects the price at which a security opened for trading, during the regular trading session of the national securities exchange or national securities association that lists the security.'' [41] One commenter, however, observed that security futures products may be based on securities the primary markets of which are foreign, and that using the opening price from a U.S. market—if there is one—might not be a meaningful or practical solution for optimal contract design.[42]

The Commissions acknowledge that the proposed definition of ''opening price'' failed to contemplate that the market trading a security that underlies a security futures product could be a market other than a national securities exchange or national securities association, such as a foreign stock exchange. Therefore, the Commissions have revised the definition to provide that, if the underlying security is not listed on a national securities exchange or a national securities association, the opening price is the price at which the security opened for trading, or a price that fairly reflects the price at which a security opened for trading, on the primary market for the security. To the extent that the underlying security is listed on a national securities exchange or national securities association, however, as explained further below, the Commissions continue to believe that it is appropriate to use the opening price from the listing market.[43]

One commenter stated that it may soon become the case that the listing market is not the primary trading venue for a security and, thus, not the most liquid market.[44] The Commissions agree that this possibility exists, but nevertheless believe that national securities exchanges and national securities associations are, at the present time, a significant source of liquidity for those securities that are permitted to underlie security futures products and, therefore, that opening prices derived from these listing markets are appropriate to use as final settlement prices. Moreover, the Commissions believe, at this time, that a rule requiring, for example, the calculation of trading volumes to determine the appropriate primary market from which to derive an opening price for a security listed in the U.S. would impose unnecessary burdens without furthering the anti-manipulation goals enshrined in Section 2(a)(1)(D)(i)(VII) of the CEA [45]

[35] *See supra* discussion at Section II.A.1., Background.

[36] *See* 66 FR 55078 (November 1, 2001).

[37] *See* 17 CFR Part 40, Appendix A(a)(2)(iii).

[38] *See* 66 FR at 45918.

[39] *See* 17 CFR 41.22(f); 66 FR at 55084. *See also* Core Principle for Contract Markets 3 of the CEA requiring designated contract markets to list contracts that are not readily susceptible to manipulation; Core Principle for Contract Markets 4 of the CEA requiring designated contract markets to monitor trading to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process; and Core Principle for DTEFs 3 of the CEA requiring DTEFs to monitor trading to ensure orderly trading. Sections 5(d)(3), 5(d)(4) and 5a(d)(3) of the CEA; 7 U.S.C. 7(d)(3), 7(d)(4) and 7a(d)(3).

[40] A ''regular trading session'' of a security means the normal hours for business of a national securities exchange or national securities association that lists the security. *See* CFTC Rule 41.1(k) and SEC Rule 6h–1(a)(2).

[41] *See* proposed CFTC Rule 41.1(j) and proposed SEC Rule 6h–1(a)(1).

[42] *See* CME Letter.

[43] If a security futures product were based on an American Depository Receipt (''ADR'') traded on a national securities exchange or national securities association, the opening price for the ADR would necessarily, under the rule adopted today, be derived from the national securities exchange or national securities association that trades it. However, if a security futures product were based on the foreign security itself, the market listing the security futures product must exercise its discretion to identify the primary market of the foreign security for purposes of deriving its opening price. *See* Securities Exchange Act Release No. 44725 (August 20, 2001).

[44] *See* CME Letter.

[45] 7 U.S.C. 2(a)(1)(D)(i)(VII).

and Section 6(h)(3)(H) of the Exchange Act.[46]

c. Determining a Final Settlement Price When Opening Price Not Readily Available

The Commissions proposed that, if the opening price of an underlying security were not readily available, the final settlement price of a cash-settled security futures product overlying that security must reflect a price of the underlying security taken from its most recent regular trading session. The proposed rule provided, however, that national securities exchanges and national securities associations could request exemptions from the Commissions on a case-by-case basis.

Although one commenter supported this aspect of the proposal,[47] four commenters generally opposed the Commissions' exclusive use of a ''look back'' settlement procedure for security futures products when the opening prices for the underlying securities are unavailable and, instead, recommended using the next day's opening prices.[48] These commenters noted that the existing cash settlement procedures for stock index options and stock index futures allow ''next opening'' prices.[49] Further, one commenter, a clearing agency, urged the Commissions not to require national securities exchanges and national securities associations to adopt rules addressing the determination of security futures final settlement prices when opening prices are not readily available, because of potential conflicts with clearing agency rules.[50] Another commenter believed that the establishment of consistent and commercially appropriate alternative pricing conventions should be resolved by a collaboration among the exchanges that design the product and the clearinghouse, with appropriate consultation with their members and participants.[51]

In addition, several commenters contended that under the Commissions' proposed rule hedges could be significantly disrupted.[52] One commenter specifically noted that market participants holding hedged or arbitraged positions expect to unwind the positions simultaneously at stock prices that have equal value in relation to derivative settlement prices.[53] According to the commenter, this equal value is achieved when the prices used to calculate the index settlement are the same prices that the market participant receives when unwinding the stock side of the position; when one or more component stocks cannot be unwound at that price, the settlements become disjointed and financial exposure occurs. Two commenters described how such a scenario would have unfolded had September 14, 2001, been an expiration Friday: A security futures product—under the Commissions'' proposal—would have settled based on the prices of underlying securities traded on September 10, although prices at the next opening on September 17 were generally significantly lower.[54]

In response to the comment letters, the final rule adopted by the Commissions allows for either look-back or next opening prices to be used as alternate final settlement prices when an opening price is not readily available.[55] The Commissions agree with the commenters that the original proposal could result in an unwanted and unwarranted de-linking of hedging positions if they mandated look-back pricing procedures for security futures products. The Commissions also agree that it would be inadvisable for the Commissions' rule to result in proposed rule changes by national securities associations and national securities exchanges that could conflict with the rules of their registered clearing agency or derivatives clearing organization.[56]

The Commissions will not, however, prohibit a national securities exchange or national securities association from employing look-back pricing if it believed that such course were appropriate. One commenter stated that situations may arise in which a very small percentage of the securities of an index fail to trade on an expiration Friday.[57] In such situations, the commenter believed, it would be reasonable to allow the overlying derivative on the index to settle by using look-back prices for those few underlying securities that did not open, rather than waiting to obtain the next opening price for those few securities before settlement. The commenter recommended that there be flexibility to employ look-back pricing if two percent or less of the weighting of an index did not open for trading on an expiration Friday. While the Commissions do not believe it is appropriate to set a *de minimis* standard for use of look-back pricing, the Commissions agree with the commenter's general point that situations may arise where the ability to use look-back pricing will facilitate the fair settlement of an overlying security futures product. The Commissions further note that the final rule being adopted today is consistent with OCC rules that allow for look-back pricing in certain circumstances.[58]

d. New Provision To Resolve Conflict Between Market Rules and Clearing Agency Rules

The rule adopted by the Commissions today allows a national securities exchange or national securities association to choose between look-back and next opening pricing procedures for security futures products; however, it also provides the registered clearing agency or derivatives clearing organization that is used to clear such products with the authority to determine the final settlement prices in certain circumstances.[59] The Commissions believe that the rule adopted today is consistent with the current conditions under which OCC provides clearing services to national securities exchanges and national

[46] 15 U.S.C. 78f(h)(3)(H).

[47] *See* CBOT Letter.

[48] *See* CBOE Letter, CME Letter, and SIG Letter. *See also* OCC Letter (urging the Commissions to withdraw this aspect of the proposal, or at a minimum, modify it to allow the final settlement value to be based on the next opening).

[49] *See* CBOE Letter, CME Letter, and SIG Letter. Two of these commenters—the CBOE and the CME—stated that, until May 2000, the futures and options markets derived alternate settlement prices from a previous trading session, but changed their procedures after Hurricane Floyd threatened to close the NYSE on the expiration Friday of September 17, 1999. *See, e.g.,* Securities Exchange Act Release No. 42857 (May 30, 2000), 65 FR 36185 (June 7, 2000) (approving SR–CBOE–00–02, which replaced look-back pricing with next opening pricing procedures on CBOE in certain situations). *See also* FIA/SIA Steering Committee Letter (stating that the Commissions' proposed requirement is inconsistent with existing market practice and rules governing a broad range of listed stock index products) and OCC By-Laws, Article XII, Section 5 (allowing OCC to fix the final settlement price for security futures products using next opening prices of the underlying securities, as well as look-back pricing).

[50] *See* OCC Letter.

[51] See FIA/SIA Steering Committee Letter.

[52] *See* CBOE Letter, CME Letter, FIA/SIA Steering Committee Letter, OCC Letter, and SIG Letter.

[53] *See* SIG Letter.

[54] *See* OCC Letter and SIG Letter.

[55] CFTC Rule 41.25(b)(2) and SEC Rule 6h–1(b)(2). The Commissions' rules do not specify the circumstances in which an opening price would not be ''readily available.'' National securities exchanges and national securities associations, however, would have to establish, as part of their listing standards, specific rules that apply this term. In addition, national securities exchanges and national securities associations would have to file proposed rule changes to delineate which method would be used in determining final settlement prices and when it would be applied.

[56] For a further discussion on this issue, *see* discussion *infra* at II.A.3.d., New Provision to Resolve Conflict Between Market Rules and Clearing Agency Rules.

[57] *See* SIG Letter.

[58] *See* OCC By Laws, Article XII, Section 5 (allowing OCC to fix the final settlement price for security futures products using next opening prices of the underlying securities, as well as look-back pricing).

[59] *See* CFTC Rule 41.25(b)(3) and SEC Rule 6h–1(b)(3).

securities associations. Any national securities exchange or national securities association wishing to use OCC clearing services for security futures must enter into a clearing agreement with OCC in which both parties agree that security futures will be cleared by OCC in accordance with OCC's by-laws and rules, which currently give OCC the final authority to determine final settlement prices in certain circumstances.[60] The Commissions believe that the rule adopted today takes into account such arrangements, as well as allows for similar arrangements between other clearing agencies or derivatives clearing organizations and national securities exchanges or national securities associations. The Commissions also believe that the rule adopted today addresses concerns raised by commenters.

Under proposed CFTC Rule 41.25 and SEC Rule 6h–1, a clearing agency or derivatives clearing organization would not have been entitled to determine a final settlement price. One clearing agency commenter pointed out that its rules relating to security futures products specifically provide that, in the case of a conflict between OCC's rules and the rules of a national securities exchange or national securities association, OCC rules control.[61] OCC expressed the view that ''the Commissions' rules should not force the exchanges to adopt rules in this area at all, but rather should permit that function to be left to the rules of the clearing organization.'' [62] OCC further stated that, ''[w]hether or not the exchanges have rules on this subject, it should remain clear that the rules of the clearing organization will control in the event of any inconsistency, thus assuring uniformity of treatment of fungible products that might be traded on more than one exchange.'' Another commenter endorsed the view that the clearing agency's rules should control in the event of a conflict.[63]

The Commissions disagree with the view that markets trading security futures products should not address settlement procedures. To the extent that a clearing agency or derivatives clearing organization does not have rules in place to address all situations for determining the settlement price of a cash-settled security futures product, the national securities exchange or national securities association that trades such product should have rules in place. However, the Commissions believe that it is appropriate to expressly provide that, in the event of a conflict between the rules of a registered clearing agency or derivatives clearing organization and a market that trades a security futures product, the clearing agency or derivatives clearing organization may establish a new final settlement price for a security futures product if it determines, pursuant to its rules, that the final settlement price determined by the exchange or association is not consistent with the protection of investors or customers, as applicable, and the public interest, taking into account such factors as fairness to buyers and sellers of the affected security futures product, the maintenance of a fair and orderly market in such security futures product, and consistency of interpretation and practice. In the absence of such a provision, confusion could arise if securities underlying a security futures product failed to trade on an expiration Friday and the market trading the security futures product and its clearing agency or derivatives clearing organization had different rules for determining a final settlement price. Moreover, this provision will make security futures products that trade on different markets more fungible, because a single clearing agency or derivatives clearing organization will be able in certain circumstances to harmonize procedures across different markets for determining alternate settlement prices.

e. Exemptions

In the final rule adopted by the Commissions, the Commissions' ability to grant exemptions to the rule's requirements has been expanded slightly from that proposed. The proposal explicitly provided that any national securities exchange or national securities association may receive an exemption from the requirements that final settlement prices of security futures products reflect the opening prices of the underlying securities or, if opening prices are not available, look-back pricing procedures. The final rule explicitly provides that the CFTC may grant an exemption with respect to any provision of paragraphs (a)(2) and (b) of CFTC Rule 41.25, provided that the CFTC finds that the exemption is consistent with the public interest and the protection of customers.[64] Similarly, the rule explicitly provides that the SEC may grant an exemption with respect to any provision of SEC Rule 6h–1, provided that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors.[65] The Commissions are expanding the scope of the exemption to make it more consistent with the SEC's exemptive authority under Section 36 of the Exchange Act, which allows the SEC, by rule, regulation, or order to conditionally or unconditionally exempt any person, security, or transaction, or any classes thereof, from any rule or regulation under the Exchange Act, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[66] Because exchanges and associations are subject to the requirements of both CFTC Rule 41.25(a)(2) and (b) and SEC Rule 6h–1, to be exempt from such requirements an exchange or association would have to obtain an exemption from both the CFTC and the SEC.

B. Regulatory Halts

1. Background

Generally, there are two types of regulatory halts used in the equity and options markets: News pending halts and circuit breaker halts. News pending halts are designed to protect the interests of current and potential shareholders by facilitating the orderly dissemination of potentially market moving information and the discovery of fair and reasonable prices for securities based on new information.[67] A news pending halt benefits current

[60] *See* Securities Exchange Act Release No. 44727 (August 20, 2001), 66 FR 45351 (August 28, 2001).

[61] *See* OCC Letter and OCC By-Laws, Article XII, Section 6.

[62] *See also* FIA/SIA Steering Committee Letter (urging the Commissions not to require exchanges and associations to adopt rules addressing the determination of fallback security futures final settlement prices when opening prices are not readily available).

[63] *See* CBOE Letter.

[64] *See* CFTC Rule 41.25(d). In the Proposing Release, the CFTC referred to ''investors'' when discussing the exemptive provision. The final rule will more closely adhere to the CEA, and refer instead to ''customers.''

[65] *See* SEC Rule 6h–1(d).

[66] *See* Section 36 of the Exchange Act, 15 U.S.C. 78mm. *See also* Section 8a(5) of the CEA allows the CFTC to make and promulgate such rules and regulations as, in the judgment of the CFTC, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA. 7 U.S.C. 12a(5). The CFTC believes that granting an exemption to the use of opening prices for cash settlement would be consistent with Section 8a(5) of the CEA, so long as the exemption is consistent with the public interest, the protection of customers, and otherwise furthers the provisions of the CEA.

[67] *See, e.g.,* the American Stock Exchange LLC (''Amex''), Listing Standards, Policies and Requirements, Section 402(b); Boston Stock Exchange (''BSE'') Rules of the Board of Governors, Supplement to Chapter XXVII, Section 4; National Association of Securities Dealers (''NASD'') Rule 4120; and the New York Stock Exchange, Inc. (''NYSE'') Listed Company Manual, Sections 202.06 and 202.07.

and potential shareholders by halting all trading in the securities until there has been an opportunity for the information to be disseminated to the public. It also helps to promote public confidence in the market and the integrity of the marketplace by giving the public an opportunity to evaluate information in making investment decisions.

Circuit breakers are brief, coordinated cross-market trading halts used by the stock, options, and index futures markets to mitigate systemic stress when a severe one-day market drop of historic proportions prevents the financial markets from operating in an orderly manner.[68] The Commissions approved various exchanges' circuit breaker proposals in response to the October 1987 market break to permit these brief, coordinated cross-market halts to provide opportunities during a severe market decline to reestablish an equilibrium between buying and selling interests in an orderly fashion, and to help to provide market participants with a reasonable opportunity to become aware of, and respond to, significant price movements.[69] The coordinated cross-market trading halts provided by circuit breaker procedures are designed to operate only during significant market declines and to substitute orderly, pre-planned halts for the *ad hoc* and destabilizing halts which can occur when market liquidity is exhausted.[70] Currently, all stock exchanges and the NASD have rules or policies to implement coordinated circuit breaker halts.[71] The options markets also have rules applying circuit breakers.[72] Finally, the index futures exchanges have adopted circuit breaker halt procedures in conjunction with their price limit rules[73] for index products.[74] The options markets also have in place rules regarding trading halts on index options.[75] Several of the options markets will halt trading when, for example, a certain fixed percentage of the index halts trading or when it is appropriate in the interests of a fair and orderly market and to protect investors.[76]

[68] *See* Circuit Breaker Report by the Staff of the President's Working Group on Financial Markets dated August 18, 1998 (''Circuit Breaker Report'').

[69] *See* Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637 (October 24, 1988) (order approving circuit breaker rules for the Amex, CBOE, NASD, NYSE). The CFTC approved circuit breaker price limit and trading halt rule changes after the publication in the **Federal Register** of the proposed rule changes and request for public comment, 53 FR 35539 (September 14, 1988) (CBOT, CME, Kansas City Board of Trade, New York Futures Exchange).

[70] *See* Circuit Breaker Report, *supra* note 68.

[71] *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (order approving proposals by Amex, BSE, Chicago Stock Exchange (''CHX''), NASD, NYSE, and the Philadelphia Stock Exchange, Inc. (''Phlx'')). *See also* Amex Rule 117; BSE, Rules of the Board of Governors, Section 34A; CHX Rule 10A; Cincinnati Stock Exchange (''CSE'') Rule 12.11; NYSE Rule 80B; the Pacific Exchange, Inc. (''PCX'') Rule 4.22 (a), (b), and (c); and Phlx Rule 133. CSE Rule 12.11 gives the chairman or the president of the CSE the power to suspend trading whenever he or she believes that such suspension would be in the public interest, which has been interpreted as requiring the CSE, as a matter of policy, to halt trading in all equities traded on the CSE in conjunction with halted trading at all other U.S. equity and equity-related markets. *See* Securities Exchange Act Release No. 26440 (January 10, 1989), 54 FR 1830 (January 17, 1989). The NASD also recognizes the risks imposed on any single market that remains open while all other U.S. markets have halted trading in response to extraordinary price movements, and maintains a market closing policy to halt, upon SEC request, all domestic trading in both securities listed on the Nasdaq Stock Market and all equity and equity-related securities trading in the over-the-counter market should other major securities markets initiate market-wide trading halts in response to extraordinary market conditions. *See* NASD Rule 4120; NASD IM–4120–4. The SEC notes that it has a standing request with the NASD to halt trading as quickly as practicable whenever the NYSE and other equity markets have suspended trading. *See* Securities Exchange Act Release No. 39582 (January 26, 1998), 63 FR 5408 (February 2, 1998).

[72] *See* Amex Rule 950 (applying Amex Rule 117, Trading Halts Due to Extraordinary Market Volatility, to options transactions); CBOE Rule 6.3B; the International Securities Exchange, LLC (''ISE'') Rule 703; PCX Rule 4.22 (which applies to options contracts through Rules 6.1(a) and (e)); and Phlx Rule 133.

[73] A price limit, in itself, does not halt trading in the futures, but prohibits trading at prices below the pre-set limit during a price decline. Intraday price limits are removed at pre-set times during the trading session, such as ten minutes after the thresholds are reached or at 3:30 p.m., whichever is earlier. Daily price limits remain in effect for the entire trading session. Specific price limits are set for each stock index futures contract. There are no price limits for U.S. stock index options, equity options, or stocks.

[74] *See, e.g.,* CME Rule 4002.I. The CME will implement a circuit breaker trading halt in SPX Futures if the 10 percent circuit breaker halt has been imposed in the securities markets and the futures are ''locked'' at their 10 percent price limit. Trading will not reopen in SPX Futures until the circuit breaker halt has been lifted in the securities markets and trading has resumed in stocks comprising at least 50 percent of the index capitalization. The CME will implement another circuit breaker trading halt in SPX Futures if the 20 percent circuit breaker halt has been imposed in the securities markets and the futures are locked at their 20 percent price limit. Once again, trading will not reopen in SPX Futures until the circuit breaker halt has been lifted in the securities markets and trading has resumed in stocks comprising at least 50 percent of the index capitalization.

[75] *See* Amex Rule 918C(b)(3); CBOE Rule 24.7; PCX Rule 7.11; and Phlx Rule 1047A(c).

[76] For example, trading on the PCX in any index option is halted whenever trading in underlying securities whose weighted value represents more than 20 percent of the value of a broad-based index or 10 percent of the value of other indices is halted. *See* PCX Rule 7.11. Similarly, under Phlx Rule 1047A(c), trading in any index option may be halted whenever trading on the primary market in underlying securities representing more than 10 percent of the current index value is halted or suspended, and there is approval from two floor officials and the concurrence of a market regulation officer. *See* Phlx Rule 1047A(c).

[77] 7 U.S.C. 2(a)(1)(D)(i)(X).

[78] 15 U.S.C. 78f(h)(3)(K).

[79] It should be noted that the Commissions have jointly adopted rules to establish the method of determining the market capitalization of a narrow-based security index for the limited purpose of determining whether a security is one of the 750 securities with the largest market capitalization under one of the exclusions from the definition of narrow-based security index. *See* Securities Exchange Act Release No. 44724 (August 20, 2001), 66 FR 44490 (August 23, 2001).

[80] *See* CBOT Letter and NYSE Letter.

2. Proposed Rule for Regulatory Halts

As discussed above, Section 2(a)(1)(D)(i)(X) of the CEA[77] and Section 6(h)(3)(K) of the Exchange Act[78] provide that listing standards for security futures products must include procedures to coordinate trading halts between the market that trades the security futures product, any market that trades any underlying security, and other markets on which any related security is traded. To assure such coordination of trading halts, the Commissions proposed CFTC Rule 41.25(a)(2) and SEC Rule 6h–1. More specifically, the Commissions proposed that trading in a future on a single security be halted at all times that such a news pending regulatory halt or a circuit breaker regulatory halt has been instituted by the listing market for the underlying security. The Commissions also proposed that trading be halted in a future on a narrow-based security index when a news pending or circuit breaker regulatory halt was instituted for one or more underlying securities that constitute 30 percent or more of the market capitalization of the narrow-based security index.[79]

3. Final Rule

a. Trading Halt Coordination in Single-Stock Futures

The Commissions are adopting, as proposed, a requirement that the rules of a national securities exchange or national securities association that lists or trades security futures products provide that trading of a future on a single security be halted at all times that a regulatory halt has been instituted for the underlying security.

Two commenters agreed that trading in a future on a single security should be halted when trading in the underlying security is subject to a regulatory halt.[80] Another commenter, while generally supporting the proposed trading halt requirements for single-stock futures, believed that it may be appropriate to trade a single stock futures product when the listing market has imposed a trading halt, if the listing

market is not the principal trading venue for the underlying security because the prices on that market may not be reflective of current market conditions.[81]

In addition, one commenter believed that the requirement to halt trading in single-stock futures when trading in the underlying security is halted was overly broad to satisfy the requirement that procedures be put in place to coordinate trading halts.[82] This commenter believed that this was overly broad and burdensome in its application to retail investors for whom single-stock futures might serve as the only available means for managing risk. This commenter recommended allowing trading halt sessions during which investors with risk exposure to an underlying equity, which has been halted, might have the opportunity to enter into single stock futures transactions with dealers.

The Commissions understand the concern raised by one commenter regarding continued trading of a security futures product when the underlying security has halted trading if the listing market is not the primary market. However, the Commissions believe that designating the listing market as the venue for the purpose of applying the rule provides for ease of use and application, because it does not require national securities exchanges or national securities associations to determine the primary market for each underlying security. Further, due to the contractual relationship between the issuer and the listing market, the listing market has a direct and ongoing relationship with the issuer. The Commissions believe, therefore, that the listing market is in the best position to be informed promptly by the issuer that pending news would require the imposition of a trading halt. Finally, the Commissions believe that the listing market represents sufficient liquidity that imposing a trading halt on a security futures product when the listing market for the underlying security imposes a trading halt furthers the purposes of Section 2(a)(1)(D)(i)(X) of the CEA[83] and Section 6(h)(3)(K) of the Exchange Act.[84]

With respect to the commenter's concern regarding the potential impact of such a rule on retail investors, the Commissions note that one of the purposes of trading halts is to provide for an adequate opportunity for information about a security to be disseminated to the public. The Commissions do not believe that it would be consistent with the protection of investors to permit investors, including retail investors, to trade a surrogate for a security—*i.e.,* a future on the security—without the benefit of material information about such security or the benefit of such other information that was the basis for the regulatory halt.

Finally, with respect to news pending halts, two commenters questioned the absolute requirement that trading in a security futures product must be halted during a news pending halt in the underlying security.[85] These commenters recommended providing exchanges with discretion to impose a trading halt when there is a news pending trading halt in the underlying security. Specifically, one commenter believed that this discretion is important because there may be circumstances when it is necessary to allow trading in a security futures product when the underlying stock is halted, such as when there is a need to adjust positions before an expiration.[86]

Given the rarity of an occurrence when a national securities exchange or national securities association would feel compelled to continue trading a security futures product while the trading of underlying stock is halted, the Commissions do not agree that there ought to be discretion in imposing regulatory halts for security futures products. The Commissions note that the underpinning for imposing news pending regulatory halts is promoting investor protection and fair and orderly markets. To the extent that there is pending news that could impact an investor's decision and to the extent that single-stock futures are surrogates for the underlying security, the Commissions continue to believe in the need for a provision requiring that trading in a security futures product be halted at all times that a regulatory halt has been instituted for the underlying security or securities, with certain limits for narrow-based security index futures. Furthermore, in the event that discretion is needed, the Commissions note that the exemptive authority in CFTC Rule 41.25(d) and SEC Rule 6h–1(d) allows the Commissions to exempt national securities exchanges or national securities associations from the regulatory halt provisions if the CFTC determines that such an exemption is consistent with the public interest and the protection of customers and the SEC determines that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors.

By adopting this rule, the Commissions aim to maintain and preserve the integrity of this mechanism so that the trading of security futures products will not be used as a tool to circumvent the institution of regulatory halts. Moreover, the Commissions believe that the purpose of halting trading in the underlying security would be frustrated if market participants could circumvent this halt by trading during the halt in the related security futures product.[87]

b. Trading Halt Coordination in Narrow-Based Security Index Futures

The Commissions proposed that national securities exchanges and national securities associations halt trading in a future on a narrow-based security index when component securities representing 30 percent or more of the market capitalization of such index are subject to a regulatory halt. In response to comments, the final rules modify the proposal by increasing to 50 percent the market capitalization represented by the component security or securities in a narrow-based security index that must be halted before a national securities exchange or national securities association must halt trading in a future on such index.

In addition to the comments supporting the Commissions' proposed trading halt rule,[88] the Commissions received three comments specifically addressing the application of regulatory halts to futures based on narrow-based security indexes.[89] One commenter neither specifically supported nor opposed the Commissions' proposed 30 percent capitalization test, although it suggested a possible alternative such as allowing narrow-based security index futures based principally on U.S. listed securities to continue trading until they have become limit offered at a price limit corresponding to a particular coordinated circuit breaker level.[90] Another commenter believed that the Commissions' proposal to require a trading halt in a narrow-based security index future when a component security or securities that constitute 30 percent or more of the market capitalization of

[81] *See* CME Letter. *See infra* notes 103–104 and accompanying text.

[82] *See* Students Letter.

[83] 7 U.S.C. 2(a)(1)(D)(i)(X).

[84] 15 U.S.C. 78f(h)(3)(K).

[85] *See* CBOE Letter and FIA/SIA Steering Committee Letter.

[86] *See* CBOE Letter.

[87] The Commissions' rules do not preclude a market trading security futures products from halting trading for other appropriate reasons, such as operational difficulties being experienced by the market or its automated systems or concerns over clearance and settlement operations.

[88] *See supra* notes 80 and 81.

[89] *See* CBOE Letter, CBOT Letter, and CME Letter.

[90] *See* CME Letter.

the index are subject to a trading halt was too low a threshold to justify the disruption that it would inflict upon the futures market.[91] Instead, this commenter recommended that the threshold be no lower than 50 percent of an index's capitalization to be consistent with the threshold required for re-opening futures trading on broad-based indexes following a market-wide halt. This commenter noted that when trading in futures on a broad-based index is halted as a result of an exchange-wide halt in the relevant securities market, such futures trading resumes only when at least 50 percent of the securities underlying an index, by market capitalization, have reopened for trading.[92]

Another commenter recommended providing exchanges with greater discretion to decide whether to impose or maintain a trading halt.[93] This commenter stated that by specifying a specific percentage level, the proposed rule implied that it would be improper for an exchange to consider trading interruptions in underlying stocks that collectively represent less than 30 percent of an index. This commenter also believed that because not all indexes underlying security futures products may be capitalization weighted, it may be difficult for exchanges to determine on a real-time basis when securities comprising 30 percent of the market capitalization of a price-weighted or equal dollar weighted index are halted. Similarly, one of the commenters expressed a concern that, with respect to corporate news events, it may be operationally difficult to determine on a real-time basis whether the threshold of market capitalization has been crossed.[94] This commenter hoped the Commissions would recognize the potential difficulty and accept good faith attempts to comply.

The Commissions do not believe that trading in a narrow-based security index future should necessarily be halted because a trading halt has been instituted for only one or several low-weighted component securities. An inappropriately low threshold could lead to needless and potentially disruptive trading halts in the narrow-based index future. However, as noted in the Proposing Release, regulatory halts of narrow-based-index component securities could affect a sufficiently large portion of the index to make continued trading of a security futures product based on that index a means of improperly circumventing regulatory halts in the underlying component securities. Under these circumstances, trading halt procedures would not be coordinated, as required by Section 2(a)(1)(D)(i)(X) of the CEA[95] and Section 6(h)(3)(K) of the Exchange Act,[96] since the security futures product would continue to trade while investors would be precluded from trading the underlying securities. Moreover, the SEC believes that continued trading in the security futures product under these circumstances could undercut key provisions in the securities laws designed to protect investors and promote the fair and orderly operation of the markets.

However, in response to the commenter's statement that the 30 percent market capitalization test was too low, and therefore, potentially too disruptive to the market, and after consideration of the potential effects of the proposed 30 percent trading halt threshold, the Commissions are requiring that trading be halted in a narrow-based security index futures product when component securities representing 50 percent or more of the market capitalization of that narrow-based security index are subject to a regulatory halt. The Commissions believe that one of the major economic benefits that market participants derive from the trading of futures on narrow-based security indexes is the ability to hedge positions containing the securities underlying the indexes, thereby reducing the risk of holding positions in those securities. For traders using a narrow-based security index future to hedge a position containing the component index securities, trading halts in certain of those component securities necessarily will introduce basis risk because the one-to-one relationship between the cash portfolio of securities and the narrow-based index future is disrupted.

The Commissions believe that the proposed 30 percent threshold is too low because it could unnecessarily disrupt hedge positions involving futures on narrow-based security indexes that may still be substantially performing their intended risk-shifting function when trading is halted in a limited number of the index's component securities. The Commissions believe that a 50 percent threshold would better serve the requirement's intended purpose. In adopting a 50 percent threshold, the Commissions sought to balance the utility of maintaining effective hedge positions with concerns about circumventing the coordination requirement by allowing trading in narrow-based index futures to continue when trading in a limited number of the underlying securities is halted.

The Commissions believe that while it is not possible to eliminate completely the risk involved in hedging securities with a future on a narrow-based security index when trading halts are instituted for certain of those underlying securities, the 50 percent threshold reduces such risk. Therefore, the Commissions are adopting a 50 percent threshold because it appears to appropriately balance the goals of hedging utility with the prevention of improper circumvention of regulatory halts in the underlying securities. The Commissions also note that the 50 percent threshold is consistent with existing thresholds for re-opening trading in broad-based security index futures following a market-wide trading halt in the trading of the underlying securities.[97]

The Commissions reiterate, however, that their rule is not designed to preclude a market trading futures on narrow-based security indexes from halting trading when securities representing less than 50 percent of the market capitalization of the index are halted or for other appropriate reasons, such as operational difficulties being experienced by the market or its automated systems or concerns over clearance and settlement operations. The Commissions also note that the threshold at 50 percent provides further discretion to national securities exchanges and national securities associations to establish their thresholds at lower levels, or to change the thresholds as market conditions or experience warrant. This provides flexibility to the markets to modify trading halt thresholds, which would not be possible if the Commissions set the threshold at a lower level.

With respect to the commenters' concern regarding the potential difficulty in calculating the market capitalization of an index, especially for price-weighted or equal dollar weighted indexes, for purposes of instituting the regulatory halt, the Commissions note that selecting market capitalization as the method for calculating the weight of the index is similar to an existing standard used to calculate trigger points for circuit breaker operations.[98] The Commissions chose to apply a similar

[91] *See* CBOT Letter.

[92] *See, e.g.,* CBOT Rule 1008.01 and CME Rule 4002.I., *supra* note 74.

[93] *See* CBOE Letter.

[94] *See* CME Letter.

[95] 7 U.S.C. 2(a)(1)(D)(i)(X).

[96] 15 U.S.C. 78f(h)(3)(K).

[97] *See* CBOT Rule 1008.01 and CME Rule 4002.I., *supra* note 74.

[98] *See, e.g.,* CME Rule 4002.I., *supra* note 74.

method in implementing regulatory halts to narrow-based security index futures products. In addition, in specifying market capitalization as the method for weighing an index, the rule provides clarity and uniformity for all national securities exchanges and national securities associations to utilize in implementing regulatory halts in security futures products based on narrow-based security indexes and helps prevent the trading of security futures products from becoming a means of circumventing regulatory halts in the underlying securities.

c. Definition of a Regulatory Halt

The Commissions are adopting the definition of regulatory halt as proposed.[99] Specifically, a regulatory halt is defined as a delay, halt, or suspension in the trading of a security by the national securities exchange or national securities association that lists the security as a result of a news pending regulatory halt or the operation of circuit breakers. The definition of regulatory halt does not include the listing market's halting of trading because of an imbalance of buy and sell orders in a particular security or when trading is disrupted due to a problem in its systems or on its trading floor. The definition of regulatory halt in the rule adopted today incorporates the definition of news pending regulatory halt contained in the Consolidated Tape Association Plan (''CTA Plan'').[100] Under the CTA Plan, a regulatory halt occurs whenever the primary market for any eligible security, in the exercise of its regulatory functions, halts or suspends trading in the security because the primary market has determined (i) that there are matters relating to the security or issuer that have not been adequately disclosed to the public, or (ii) that there are regulatory problems relating to the security which should be clarified before trading is permitted to continue.[101] When a regulatory trading halt is initiated by the primary market for a security, the regional exchanges and Nasdaq also halt trading in the security, and the options exchanges halt trading in related options. The options exchanges also halt trading in an equity option when the underlying security has ceased trading.[102]

Although generally supporting the requirement to halt trading in single-stock futures when trading in the underlying security has been halted due to a corporate news event, one commenter stated that the definition of regulatory halt could be refined to address situations not contemplated by the CFMA, such as where the listing market is not the primary trading venue for the underlying security or where the listing market is in a foreign country.[103]

In response to this comment, the Commissions note that the rule being adopted today does not preclude national securities exchanges and national securities associations trading security futures products from halting trading if they believe it is necessary to the orderly operation of the market. The rules of a national securities exchange or national securities association may permit it to halt trading in situations not covered by the rule being adopted today.[104] To the extent that the security or securities underlying a security futures product is listed on a foreign market, under the rule adopted today, national securities exchanges and national securities associations have the flexibility to impose trading halt requirements where the underlying security is listed solely on a foreign market. Further, the Commissions believe that it would be unduly burdensome and administratively difficult to require national securities exchanges and associations to calculate the primary market for each security underlying a security futures product. Again, under their rules, national securities exchanges and associations may also halt trading in a security futures product if the primary market, but not the listing market, halted trading in the underlying security or securities, but it is not mandated by the Commissions' rules.

With respect to the Commissions' proposal to include within the definition of ''regulatory halt'' trading halts due to circuit breaker procedures, three commenters generally supported the extension of market-wide circuit breaker procedures to security futures products in order to ensure coordinated and consistent circuit breaker procedures across equity products.[105] One of the commenters, however, noted a potential competitive issue over security futures product ''look-alikes'' that can trade in the unregulated upstairs market and do currently trade in foreign jurisdictions that may not adhere to the coordinated circuit breaker procedures.[106] This commenter recommended that the Commissions provide exchanges with latitude in implementing coordinated circuit breaker procedures and flexibility in imposing this requirement on security futures products where the principal trading venues for the underlying securities (or for a subset in the case of narrow-based indexes) are in foreign markets.

The Commissions note that the coordinated cross-market trading halts provided by circuit breaker procedures are designed to operate only during significant market declines and to substitute orderly, pre-planned halts for the *ad hoc* and destabilizing halts that can occur when market liquidity is exhausted. The circuit breakers also protect investors and the market by providing opportunities for market and market participants to assess market conditions and potential systemic stress during a historic market decline. In approving the original circuit breakers proposed by the securities market, the SEC noted that the circuit breakers were an effort by the securities and futures markets to arrive at a coordinated means to address potentially destabilizing market volatility of the severity of the October 1987 market break.[107] Therefore, in the interest of having coordinated trading halts across the U.S. equity markets, the Commissions do not agree that the exchanges should have latitude in implementing coordinated circuit breaker procedures on security futures products where the underlying

[99] *See* CFTC Rule 41.1(l) and SEC Rule 6h–1(a)(3).

[100] *See* Securities Exchange Act Release No. 41315 (April 20, 1999), 64 FR 23142 (April 29, 1999) (noting that the NYSE follows the CTA Plan when instituting a regulatory halt); and Securities Exchange Act Release No. 41877 (September 14, 1999), 64 FR 51566 (September 23, 1999) (noting that Amex follows the CTA Plan when instituting a regulatory halt); *see also* CTA Plan (Second Restatement), Section XI (a). The CTA Plan is a joint industry plan that governs the consolidated transaction reporting system, and each of the participants agrees to comply with the provisions of the plan. Recognizing the importance of disseminating information with respect to trading halts in certain securities, the CTA Plan imposes notification obligations upon the primary market whenever a regulatory halt occurs.

[101] *See* CTA Plan (Second Restatement), Section XI (a). For example, an event that may qualify under this standard and call for a regulatory halt is when it is unclear whether a security continues to meet the listing standards of the market on which the security is listed.

[102] The rules of the options exchanges generally provide for halts in options whenever it is appropriate in the interests of a fair and orderly market and to protect investors. See Amex Rule 918(b); CBOE Rule 6.3(a) and .04 of the Interpretations and Policies of CBOE Rule 6.3; ISE Rule 702; PCX Rule 6.65(a); and Phlx Rule 1047(b).

[103] *See* CME Letter.

[104] One commenter believed that the Commissions should expand on the examples of the reasons why national securities exchanges and associations could impose additional trading halts to include order imbalances. *See* NYSE Letter. As noted above, the rule being adopted today does not preclude a market trading security futures products from establishing rules that permit or require it to halt trading for other appropriate reasons.

[105] *See* CBOE Letter and FIA/SIA Steering Committee Letter; *see also* CME Letter.

[106] *See* CME Letter.

[107] *See* Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637 (October 24, 1988).

security is not solely listed in a foreign market. To the extent that additional latitude is needed, the Commissions have the discretion to grant separate exemptions in those circumstances if the CFTC determines that such an exemption is consistent with the public interest and the protection of customers and the SEC determines that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors.

For these reasons, the Commissions believe that it is important to include within the definition of regulatory halt cross-market circuit breakers and, therefore, to require the application of cross-market circuit breaker regulatory halt procedures to security futures products. Moreover, the Commissions believe that such requirement is necessary to satisfy the requirements of Section 2(a)(1)(D)(i)(X) of the CEA[108] and Section 6(h)(3)(K) of the Exchange Act.[109] If cross-market circuit breaker regulatory halt procedures were not applied to the security futures products, such a failure would undermine the use of trading halts in the underlying securities markets.

d. Exemptions

As discussed previously,[110] the Commissions are expanding the exemption provisions in CFTC Rule 41.25(d) and SEC Rule 6h–1(d), which were originally proposed to apply only to the final settlement prices for security futures products. Under the final rule, the CFTC has the authority to grant an exemption with respect to any provision of paragraphs (a)(2) and (b) of CFTC Rule 41.25, provided that the CFTC finds that the exemption is consistent with the public interest and the protection of customers.[111] The SEC has the authority to grant an exemption with respect to any provision of SEC Rule 6h–1, provided that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors.[112] Because exchanges and associations are subject to the requirements of both CFTC Rule 41.25(a)(2) and (b) and SEC Rule 6h–1, to be exempt from such requirements an exchange or association would have to obtain an exemption from both the CFTC and the SEC.

C. Commissions' Interpretation of Statutory Requirements for Coordinated Surveillance

1. Markets Trading Security Futures

In amending the CEA and Exchange Act to permit the trading of futures on single stocks and narrow-based security indexes, Congress specifically required that exchanges and associations trading these new products have procedures in place for coordinated surveillance with other markets on which security futures products trade, any market on which any security underlying the security futures product is traded, and other markets on which any related security trades.[113] Because security futures products are surrogates for the securities on which their values are based, such coordinated surveillance is essential to detection of manipulation and insider trading. As discussed in detail below, the Commissions interpret the statutory requirement for coordinated surveillance to mean that if an exchange or association is a Full Member of the Intermarket Surveillance Group (''ISG'') [114] or has the ability to obtain all information that a Full Member of the ISG is currently able to obtain from both current and former members, including, among other things, the ability to obtain market surveillance reports or information, and information relating to investigations, then that market would meet the statutory requirement for coordinated surveillance.

For an exchange or association to satisfy the statutory requirement that ''procedures be in place for coordinated surveillance,'' the Commissions stated in the Proposing Release that they believed it was ''essential that all such exchanges and associations be Full Members of the ISG.'' [115] In view of the role that the ISG plays, the Commissions stated their belief that the ISG should grant full memberships to all national securities exchanges and national securities associations registered pursuant to Section 15A(a) of the Exchange Act [116] trading securities futures products, including Security Futures Product Exchanges, upon a good-faith showing that the entities meet the criteria for full membership.

The CFTC in a separate proposing release also proposed, in part, to require boards of trade trading security futures products to be Full Members of ISG.[117] The CFTC received three comment letters regarding this aspect of the CFTC Proposal.[118] All of the commenters raised concerns regarding mandatory memberships in ISG. As a result, the CFTC deferred making a decision on requiring membership in ISG to allow the Commissions together to consider the appropriate means of ensuring that the coordinated surveillance requirement under the CEA and the Exchange Act is satisfied.[119]

As noted in the Proposing Release, ISG was created under the auspices of the SEC as a forum to ensure that national securities exchanges and national securities associations adequately share surveillance information and coordinate inquiries and investigations designed to address potential intermarket manipulations and trading abuses. Full Members routinely share a great deal of surveillance and investigatory information, and the SEC continues to believe that this framework has proven to be an effective mechanism to ensure that there is adequate information sharing and investigatory coordination for potential intermarket manipulations and trading abuses.

The Commissions continue to believe that any national securities exchange—including an exchange registered under Section 6(g) of the Exchange Act—that satisfies the requirements to be a Full Member of ISG should be admitted as a Full Member of ISG. Nevertheless, in light of comment letters received on the CFTC Proposal, we do not believe that an exchange trading security futures products *must* be a Full Member of ISG to satisfy the requirement that ''procedures be in place for coordinated surveillance among the market on which the security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading.'' [120]

In particular, the Commissions believe that exchanges and associations trading security futures products may also satisfy the CEA's and Exchange Act's coordinated surveillance requirement through Affiliate Membership in ISG, if the Affiliate Members trading security futures products also enter into supplemental

[108] 7 U.S.C. 2(a)(1)(D)(i)(X).

[109] 15 U.S.C. 78f(h)(3)(K).

[110] *See supra* discussion at II.A.3.e., Exemptions, which discusses the expansion of the exemption to make it more consistent with the SEC's exemptive authority under Section 36 of the Exchange Act.

[111] *See* CFTC Rule 41.25(d).

[112] See SEC Rule 6h–1(d).

[113] Section 2(a)(1)(D)(i)(VIII) of the CEA, 7 U.S.C. 2(a)(1)(D)(i)(VIII); Section 6(h)(3)(I) of the Exchange Act, 15 U.S.C. 78f(h)(3)(I).

[114] ISG Full Members are Amex, BSE, CBOE, CHX, CSE, ISE, NASD, NYSE, PCX and Phlx.

[115] *See* Proposing Release, *supra* note 18.

[116] 15 U.S.C. 78*o*–3(a).

[117] *See* 66 FR 37932 (July 20, 2001) (''CFTC Proposal'').

[118] The CFTC received comment letters from CME, Amex, and ISG.

[119] *See* 66 FR 55078 (November 1, 2001).

[120] Section 2(a)(1)(D)(i)(VIII) of the CEA, 7 U.S.C. 2(a)(1)(D)(i)(VIII); Section 6(h)(3)(I) of the Exchange Act, 15 U.S.C. 78f(h)(3)(I).

agreements with other Affiliate Members trading security futures products and with Full Members to share the same information as Full Members of ISG currently share with each other.[121] The Commissions, however, believe that the current information sharing agreement among Affiliate Members and the agreement between Affiliate and Full Members (referred to in Appendix A as ''Affiliate Agreement'') is insufficient to satisfy the obligation of a market trading security futures products to coordinate surveillance with other markets trading security futures and with markets trading related products because of certain limitations on the information that must be shared.[122] The Commissions believe, however, that these limitations, discussed below, can be overcome if Affiliate Members trading security futures products and Full Members agree to share information beyond what is currently required by the ISG for Affiliate Members.

For example, ISG provides to Full Members market surveillance reports. It is unclear whether Full Members have access to market surveillance reports of Affiliate Members or whether Affiliate Members have access to such information from each other. The Commissions understand that this information is, as a practical matter, made available to all ISG members upon request, but believe that the obligation to provide such information upon request should be explicit. In addition, Full Members are required to share information and documents, upon request, about current and former members.[123] Affiliate Members, however, are only required to share with each other and with Full Members information and documents relating to current members.[124] Similarly, Full Members are only required to share with Affiliate Members information about current members, not about their former members.[125] The Commissions believe that information about former members is necessary under some circumstances to facilitate investigations by Full and Affiliate Members.

Moreover, the agreement among Full Members allows Full Members to request information and documents from each other relating to ongoing investigations.[126] This information can be very useful in assisting an exchange performing its own, related investigation. However, the agreement between Full Members and Affiliate Members (and among Affiliate Members) does not provide for the sharing of this type of information. It is the Commissions' understanding that these agreements did not provide for the sharing of investigatory information due to a perceived prohibition in the CEA that restricted the sharing of such information.[127] The CFTC, however, believes the CEA allows the sharing of investigatory documents and information, provided that the futures market providing such information adopts a rule allowing for the sharing of information pursuant to an information sharing arrangement.[128] Therefore, because there is no legal prohibition on sharing investigatory information, the Commissions believe that such information may be shared between Affiliate and Full Members and among Affiliate Members trading security futures products. Without the sharing of such investigatory information, investigations by an Affiliate Member into manipulation or trading abuses related to the trading of security futures could be hindered unnecessarily. In addition, a Full Member's inability to obtain such information or documents from an Affiliate Member could hinder the Full Member's investigation of manipulation or trading abuses in other securities that were related to manipulation or trading abuses in the trading of security futures on an Affiliate Member's market.

Finally, once information is requested, Affiliate Members are generally only required to use ''best efforts'' in accordance with their rules to obtain the information.[129] In addition, Affiliate Members only need to provide the information to Full Members to the extent that it is not inconsistent with its rules or with applicable law.[130] Similarly, Full Members are only required to use best efforts in accordance with their rules to obtain the requested information for Affiliate Members and to provide such information to the extent that it is not inconsistent with its rule or applicable law.[131] Such limitations are not included as part of the agreement among Full Members. The Commissions believe that any restrictions on the ability of Affiliate or Full Members to share information could hinder the ability of these members to coordinate surveillance.

As discussed above, the Commissions believe that the limitations on an Affiliate Member's obligations to share information could be easily addressed through means other than becoming Full Members of ISG. For example, Affiliate Members trading security futures products and Full Members could enter into a supplementary agreement to share the information described above among each other despite the limitations in the current agreements.[132] If Full and Affiliate Members enter into this type of agreement, the Commissions believe that the markets would meet the statutory requirement for coordinated surveillance.

The Commissions also believe that exchanges trading security futures products could satisfy the requirement to coordinate surveillance by entering into bilateral surveillance agreements with each exchange, association, or market on which any security underlying the security futures product or related security is traded to detect manipulation and insider trading. The Commissions, however, believe that such bilateral agreements would have to contain essentially the same information sharing obligations that Full Members of ISG currently have with respect to each other.[133]

Accordingly, if a market trading security futures products becomes a Full Member of the ISG, becomes an Affiliate Member of the ISG and enters into a supplemental agreement to share the additional information described above with Full Members and other Affiliate Members trading security futures products, or enters into appropriate bilateral surveillance agreements to detect manipulation and insider trading with each exchange, association or market on which security futures products trade, and any market on which any security underlying the security futures product or related security is traded, the Commissions believe that the market would satisfy the requirements of Section 2(a)(1)(D)(i)(VIII) of the CEA and Section 6(h)(3)(I) of the Exchange Act.[134]

[121] An ISG Affiliate Member is a contract market or foreign self-regulatory organization that has become affiliated with ISG. *See* Appendix A for the relevant provisions of the agreement among Full Members of ISG.

[122] Futures exchanges and non-U.S. exchanges and associations are Affiliate Members of ISG. The limitations in an Affiliate Member's obligations to share information is of less concern when an Affiliate Member is not trading securities.

[123] *See* Appendix A, Section 2(b).

[124] *See, e.g.,* Appendix A, Section 2(c).

[125] *See, e.g.,* Appendix A, Section 2(d).

[126] *See* Appendix A, Section 2(b).

[127] *See* 8c(a)(2) of the CEA, 7 U.S.C. 12c(a)(2).

[128] *See* 8a(6) of the CEA, 7 U.S.C. 12a(6).

[129] *See, e.g.,* Appendix A, Section 2(c).

[130] *Id.*

[131] *See, e.g.,* Appendix A, Section 2(d).

[132] The Commissions note that this may require exchanges and associations trading security futures products to implement rules allowing for the sharing of information. *See supra* notes 126–128.

[133] *See* Appendix A, Section 2.

[134] 7 U.S.C. 2(a)(1)(D)(i)(VIII); 15 U.S.C. 78f(h)(3)(I).

2. Exchanges Trading Securities Other Than Security Futures

Sections 6(b)(1) and 15A(b)(2) of the Exchange Act require all national securities exchanges and national securities associations to enforce compliance by their members and persons associated with their members, with the provisions of the Exchange Act and the rules and regulations thereunder.[135] Securities exchanges' and associations' memberships in ISG currently enable them to satisfy this requirement with respect to enforcement of the proscriptions against insider trading and the anti-manipulation provisions of the federal securities laws.[136] Security futures products are surrogates for their underlying securities and, therefore, there is the potential that trading in this new product could be used to manipulate trading in the underlying security or in other related securities, such as options. Accordingly, the SEC believes that the introduction of security futures products means that, to satisfy their obligations under Sections 6 and 15A of the Exchange Act,[137] exchanges and associations that trade securities that are related to security futures must have the same ability to share information and to coordinate surveillance with markets trading such security futures products as they currently have through ISG with exchanges and associations trading other securities. For this reason, the SEC believes that the limitations described above in the current obligations of Affiliate Members to share information with Full Members would also unnecessarily hinder or constrain the ability of national securities exchanges and national securities associations to enforce compliance with the federal securities laws.

The SEC believes that exchanges and associations could address these limitations on the obligations of Affiliate Members to share information by, for example, entering into a supplementary agreement to share such information among Full and Affiliate Members despite the limitations in the current agreements. Alternatively, the SEC believes that exchanges or associations trading securities that are related to security futures traded by an exchange or association that is not a Full Member of ISG could satisfy the requirement to coordinate surveillance by entering into bilateral surveillance agreements with such exchange or association that is adequate to detect manipulation and insider trading. The Commissions, however, believe that such bilateral agreements would have to contain essentially the same information sharing obligations that Full Members of ISG currently have with respect to each other.

III. Paperwork Reduction Act

CFTC: This rulemaking contains information collection requirements. As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), the CFTC submitted a copy of the proposed amendments to its rules to the Office of Management and Budget (OMB) for its review.

Collection of Information: Part 41, Relating to Security Futures Products, OMB Control Number 3038–0059.

No comments were received in response to the CFTC's invitation in the proposed rules to comment on any paperwork burden associated with these regulations.[138]

SEC: Certain provisions of the new rule contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[139] Accordingly, the Commission submitted the proposed rule to the Office of Management and Budget (''OMB'') in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. OMB approved the new collection and assigned it OMB Control No. 3235–0555. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

In the Proposing Release, the Commissions solicited comments on these collection of information requirements. The Commissions received no comments that specifically addressed the PRA portion of the Proposing Release. Because the new rule is substantially similar to the proposed rule, the SEC continues to believe that the estimates published in the Proposing Release regarding the proposed collection of information burdens associated with the new rule are appropriate.

A. Summary of Collection of Information

As discussed above, the Exchange Act, as amended by the CFMA, provides that a national securities exchange or national securities association may trade security futures products only if the listing standards for such products conform with the requirements set forth in Section 6(h)(3) of the Exchange Act.[140] These listing standards must, among other things, require that: (1) Trading in the security futures product not be readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities,[141] and (2) the market on which the security futures product is traded has in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded.[142] To further these statutory mandates, the SEC is adopting SEC Rule 6h–1 to generally provide that: (1) the final settlement price for each cash-settled security futures product fairly reflect the opening price of the underlying security or securities; and (2) the trading in any security futures product halt when a regulatory halt is instituted with respect to a security or securities underlying the security futures product by the national securities exchange or national securities association listing the security. The SEC anticipates that national securities exchanges and national securities associations that wish to trade security futures products will file with the SEC proposed rule changes, pursuant to Section 19(b) of the Exchange Act,[143] to establish listing standards that are consistent with the requirements set forth in Section 6(h)(3) of the Exchange Act.[144]

B. Proposed Use of Information

The SEC will review these proposed rule changes in the manner prescribed by Section 19(b) of the Exchange Act. In addition, the SEC will publish these proposed rule changes to afford the public an opportunity to comment on the listing standards adopted by national securities exchanges and national securities associations with respect to security futures products.

[135] In addition, Sections 6(b)(1) and 15A(b)(2) of the Exchange Act require all national securities exchanges and national securities associations to enforce compliance by their members and persons associated with their members, with the provisions of the exchanges' or associations' own rules. Section 6(b)(1) of the Exchange Act, 15 U.S.C. 78f(b)(1); Section 15A(b)(2) of the Exchange Act, 15 U.S.C. 78*o*–3(b)(2).

[136] Sections 9 and 10(b) of the Exchange Act, 15 U.S.C. 78i and 78j(b).

[137] 15 U.S.C. 78f and 15 U.S.C. 78*o*–3.

[138] *See* Proposing Release, 66 FR at 45912.

[139] 44 U.S.C. 3501 *et seq.*

[140] 15 U.S.C. 78f(h)(3).

[141] *See* 15 U.S.C. 78f(h)(3)(H).

[142] *See* 15 U.S.C. 78f(h)(3)(K).

[143] 15 U.S.C. 78s(b).

[144] 15 U.S.C. 78f(h)(3).

C. Respondents

The SEC estimates that there will be 17 respondents to the proposed rule: 9 currently registered national securities exchanges, 1 national securities association (the NASD) that operates a securities market (Nasdaq), and an estimated 7 futures markets that are expected to register as Security Futures Product Exchanges.

D. Total Annual Reporting and Recordkeeping Burden

The SEC received no comments on its proposed estimates and has not revised them. The SEC estimates the paperwork burden for each respondent to comply with proposed SEC Rule 6h–1 will be 10 hours of legal work at $128/hour,[145] for a total cost of $1,280 per respondent. The SEC estimates that the total burden on all respondents will be 170 hours (10 hours/response x 17 respondents x 1 response/respondent), for a total cost of $21,760 ($1,280/response x 17 respondents x 1 response/respondent). The SEC believes that these burdens will be incurred on a one-time basis and will not recur.

E. Record Retention Period

As set forth in SEC Rule 17a–1,[146] a national securities exchange or national securities association must retain records of the collection of information for at least five years, the first two years in an easily accessible place. However, SEC Rule 17a–1 requires a national securities exchange registered under Section 6(g) of the Exchange Act to retain only those records relating to persons, accounts, agreements, contracts, and transactions involving security futures products.[147]

F. Collection of Information Is Mandatory

This collection of information is mandatory for any national securities exchange or national securities association that elects to list and trade security futures products.

G. Confidentiality

Any information filed with the Commission will be made publicly available. Information in the files of national securities exchanges or national securities associations that elect to list and trade security futures products will be subject to Commission enforcement inquiries or investigations and trading reconstructions, as well as for inspections and examinations.

IV. Costs and Benefits of the Final Rule

CFTC: Section 15 of the CEA requires the CFTC to consider the costs and benefits of its action before issuing a new regulation.[148] The CFTC understands that, by its terms, Section 15 does not require the CFTC to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Nor does Section 15 require that each proposed rule be analyzed in isolation when that rule is a component of a larger package of rules or rule revisions. Rather, Section 15 simply requires the CFTC to ''consider the costs and benefits'' of its action.

Section 15 further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the CFTC could in its discretion give greater weight to any one of the five enumerated areas of concern and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The CFTC considered the costs and benefits of these rules in light of the specific areas of concern identified in Section 15,[149] and concluded that the rules should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the futures and options markets or on the risk management practices of trading facilities or others. The rules also should have no material effect on the protection of market participants and the public and should not impact the efficiency and competition of the markets.

The CFTC invited public comment on the costs and benefits of the proposed rules.[150] The CFTC received no comments. Accordingly, the CFTC has determined to adopt the rules discussed above.

SEC: The CFMA [151] authorizes the trading of futures on individual stocks and narrow-based security indexes (''security futures'').[152] The CFMA provides, among other things, that the listing standards for security futures products must require that trading in security futures products not be readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities.[153] In addition, listing standards must require that the market on which the security futures product trades has in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded.[154]

Accordingly, the SEC is adopting new SEC Rule 6h–1 under the Exchange Act generally to require that the final settlement price for each cash-settled security futures product fairly reflect the opening price of the underlying security or securities, and that trading in any security futures product halt when a regulatory halt is instituted with respect to a security or securities underlying the security futures product by the national securities exchange or national securities association listing the security.

Specifically, SEC Rule 6h–1(a) defines the terms ''opening price,'' ''regular trading session,'' and ''regulatory halt'' generally as proposed.[155] However, the SEC has incorporated a provision into the definition of ''opening price'' to clarify that if a security is not listed on a national securities exchange or a national securities association, the opening price shall be the price at which a security opened for trading, or a price that fairly reflects the price at which a security opened for trading, on the primary market for the security.

Also like the proposed rule, adopted SEC Rule 6h–1(b)(1) requires that the final settlement price of a cash-settled security futures product must fairly reflect the opening price of the

[145] The estimated rate of $128 per hour is derived from the SIA Management and Professional Earnings, Table 107 (Attorney, New York), and includes a 35 percent differential for bonus, overhead, and other expenses.

[146] 17 CFR 240.17a–1.

[147] *See* 15 U.S.C. 78q(b)(4)(B).

[148] 7 U.S.C. 19.

[149] *See* Proposing Release, 66 FR at 45914.

[150] *See* Proposing Release, 66 FR at 45914.

[151] Pub. L. No. 106–554, Appendix E, 114 Stat. 2763.

[152] After December 21, 2003, the SEC and the CFTC may jointly determine to permit trading of puts, calls, straddles, options, or privileges on security futures (along with security futures, collectively referred to as ''security futures products''). *See* Section 2(a)(1)(D)(iii) of the CEA, 7 U.S.C. 2(a)(1)(D)(iii); Section 6(h)(6) of the Exchange Act, 15 U.S.C. 78f(h)(6).

[153] *See* Section 2(a)(1)(D)(i)(VII) of the CEA, 7 U.S.C. 2(a)(1)(D)(i)(VII); Section 6(h)(3)(H) of the Exchange Act, 15 U.S.C. 78f(h)(3)(H).

[154] *See* Section 2(a)(1)(D)(i)(X) of the CEA, 7 U.S.C. 2(a)(1)(D)(i)(X); Section 6(h)(3)(K) of the Exchange Act, 15 U.S.C. 78f(h)(3)(K).

[155] SEC Rule 6h–1(a).

underlying security or securities.[156] However, if the opening price for one or more securities underlying a security futures product is not readily available,[157] SEC Rule 6h–1(b)(2) provides that the final settlement price of the security futures product shall fairly reflect the price of the underlying security or securities during its most recent regular trading session or the next available opening price of the underlying security or securities.[158] Furthermore, notwithstanding SEC Rule 6h–1(b)(1) or (b)(2), the SEC amended the proposed rule to add SEC Rule 6h–1(b)(3), which states that if a clearing agency to which a final settlement price of a security futures product is or would be reported determines, pursuant to its rules, that such final settlement price is not consistent with the protection of investors and the public interest, the clearing agency has the authority to determine, under its rules, a final settlement price for such security futures product. Under SEC Rule 6h–1(b)(3), the clearing agency must take into account such factors as fairness to buyers and sellers of the affected security futures product, the maintenance of a fair and orderly market in such security futures product, and consistency of interpretation and practice.

With respect to regulatory halts for security futures products, the SEC is generally adopting the provision as proposed requiring that trading of a security futures product based on a single security be halted at all times that a regulatory halt has been instituted for the underlying security.[159] The trading of security futures product based on a narrow-based security index must be halted at all times that a regulatory halt has been instituted for one or more of the underlying securities that constitute 50 percent or more of the market capitalization of the narrow-based security index.[160]

Finally, the SEC has expanded the exemption in SEC Rule 6h–1(d) to permit the SEC to grant a national securities exchange or national securities association an exemption from any provision of SEC Rule 6h–1 if the SEC determines that such an exemption is necessary or appropriate in the public interest and consistent with the protection of investors. The SEC has expanded the scope of the exemption to make it more consistent with its exemptive authority under Section 36 of the Exchange Act, which allows the SEC, by rule, regulation, or order to conditionally or unconditionally exempt any person, security, or transaction, or any classes thereof, from any rule or regulation under the Exchange Act, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[161]

A. Comments

In the Proposing Release,[162] the SEC requested comments on all aspects of the costs and benefits of the adopted rule, including identification of additional costs and benefits of the changes. In addition, the SEC encouraged commenters to identify, discuss, analyze, and supply relevant data regarding the proposed rule. Specifically, the SEC requested data to quantify the costs and benefits of the proposed rule. The SEC requested estimates of these costs and benefits, as well as any costs and benefits not already described, which may result from the adoption of the proposed rule. Furthermore, the SEC requested comment on the estimate of the number of respondents that would be affected by proposed SEC Rule 6h–1 and the costs and benefits associated with complying with the proposed rule. The SEC specifically requested comments on the operational and maintenance costs associated with the proposal and whether these costs would be significant. Commenters were asked to provide analysis and empirical data to support their views on the costs and benefits associated with the proposal.

Although no comments specifically addressed the Costs and Benefits analysis in the Proposing Release,[163] there were comments that may apply generally to the costs and benefits of the adopted rule. The SEC anticipates that the rule adopted today will generate the costs and benefits described below and has incorporated the general comments into the applicable discussion.

B. Benefits of SEC Rule 6h–1 Under the Exchange Act

Adopted SEC Rule 6h–1(a) defines the terms ''opening price,'' ''regular trading session,'' and ''regulatory halt.'' As a definitional provision, subparagraph (a) imposes no costs on the respondents. However, by defining the terms, the SEC believes that adopted SEC Rule 6h–1(a) should benefit respondents by providing legal certainty to respondents when complying with the rule.

One commenter stated that the definition of ''opening price'' failed to anticipate instances where the market trading a security underlying a security futures product may be a market other than a national securities exchange or national securities association, such as a foreign stock exchange.[164] Therefore, the SEC has revised the definition to provide that, if the underlying security is not listed on a national securities exchange or a national securities association, the opening price is the price at which the security opened for trading, or a price that fairly reflects the price at which a security opened for trading, on the primary market for the security. The SEC believes that the additional language should provide clear guidance and clarification of the term ''opening price'' in those instances where the security futures products may be based on securities that are not listed in the United States. To the extent that the underlying security is listed on a national securities exchange or national securities association, the SEC believes that it is appropriate to use the opening price from the listing market. Despite the commenter's view that the listing market may not be the primary trading venue for a security and, thus, not the most liquid market,[165] the SEC believes that the listing market is a significant source of liquidity for a security that underlies a security futures product and that a rule requiring, for example, the calculation of trading volumes to determine the appropriate primary market from which to derive an opening price for a security listed in the U.S. would impose unnecessary burdens without significantly furthering anti-manipulation goals.

Further, this commenter stated that the proposed definition of the term ''regulatory halt,'' which is being

[156] SEC Rule 6h–1(b).

[157] Although SEC Rule 6h–1(b)(2) does not define when an opening price would not be ''readily available,'' national securities exchanges and national securities associations would have to establish, as part of their listing standards, rules that interpret this term.

[158] The SEC amended the proposed rule to allow look forward pricing in response to recommendations by commenters.

[159] SEC Rule 6h–1(c)(1).

[160] In the Proposing Release, the SEC originally proposed halting trading in a security futures product when 30 percent of the market capitalization of a narrow-based security index halted trading in the underlying markets. As discussed further below, this change was made in response to commenters. *See* SEC Rule 6h–1(c)(2). The rule being adopted today does not preclude a market trading security futures products based on narrow-based security indexes from halting trading at a threshold of less than 50 percent of the market capitalization of the index or for other appropriate reasons, such as operational difficulties being experienced by the market or its automated systems or concerns over clearance and settlement operations.

[161] *See supra* note 66 and accompanying text.

[162] *See* Proposing Release, *supra* note 18.

[163] *See* Proposing Release, *supra* note 18.

[164] *See* CME Letter.

[165] *See* CME Letter.

adopted as proposed, also does not address situations where the listing market is not the primary trading venue for the underlying security or where the listing market is in a foreign country.[166] The SEC notes that the rule adopted today is not intended to limit the ability of national securities exchanges and national securities associations to impose a trading halt in other circumstances, such as when the underlying security is listed on a foreign market that has halted trading. The rule provides national securities exchanges and national securities associations with the flexibility to submit proposed rule changes that address situations not covered by the rule being adopted today.[167] However, in those instances where the underlying security is listed in the United States, the SEC believes that by specifically designating the listing market as the appropriate venue, the rule allows for ease of application and clear guidance for respondents to administer and implement the rule. For example, the SEC believes that, due to the contractual relationship between the issuer and the listing market, the listing market has a direct and ongoing relationship with the issuer and, therefore, is in the best position to be informed promptly by the issuer that pending news would require the imposition of a trading halt.

Adopted SEC Rule 6h–1(b)(1) requires that the final settlement price of a cash-settled security futures product must fairly reflect the opening price of the underlying security or securities. Several commenters generally supported this aspect of the proposal.[168] The SEC believes that the provision for cash-settled security futures products under adopted SEC Rule 6h–1(b)(1) is necessary to minimize opportunities for intermarket manipulations and to promote the fair and orderly operation of the securities markets. In particular, opening-price settlement procedures appear to be necessary to satisfy Section 6(h)(3)(H) of the Exchange Act [169] that listing standards for security futures products must require that trading in a security futures product not be readily susceptible to manipulation of the price of such product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities.

The SEC believes that SEC Rule 6h–1(b)(1) should facilitate the ability of the securities markets to handle expiration-related unwinding programs and mitigate the liquidity strains that had previously been experienced in the securities markets on expirations for stock index futures and options. The SEC further believes that the liquidity constraints associated with expiration-related buy or sell programs at the close on expiration Fridays aggravated ongoing market swings during an expiration and provided opportunities for entities to anticipate these pressures and enter orders as part of manipulative or abusive trading practices designed to artificially drive up or down share prices.[170]

The SEC notes that the rule adopted today provides national securities exchanges and national securities associations with flexibility to implement the requirements of the Exchange Act. The SEC notes that the rule adopted today does not mandate that a particular methodology be used to derive an opening price. A national securities exchange or national securities association would retain the flexibility to establish the procedures to determine the opening price, which will be used to determine the settlement price of security futures products. The SEC believes that this flexibility should provide respondents with the ability to meet the needs of the market place, while satisfying their obligations under the Exchange Act.

In those instances where the opening price was not readily available, the SEC proposed that the final settlement price of a cash-settled security futures product overlying that security must reflect a price of the underlying security taken from its most recent regular trading session. The proposed rule also provided that national securities exchanges and national securities associations could request exemptions from the settlement price provisions from the SEC on a case-by-case basis.

Although one commenter supported this aspect of the proposal,[171] four commenters generally opposed the SEC's exclusive use of a ''look back'' settlement procedure for security futures products when the opening prices for the underlying securities are unavailable and, instead, recommended using the next day's opening prices.[172] These commenters noted that the existing cash settlement procedures for stock index options and stock index futures allow ''next opening'' prices.[173] Further, one commenter, a clearing agency, urged the SEC not to require national securities exchanges and national securities associations to adopt rules addressing the determination of security futures final settlement prices when opening prices are not readily available because of potential conflicts with clearing agency rules.[174] Another commenter believed that the establishment of consistent and commercially appropriate alternative pricing conventions should be resolved by a collaboration among the exchanges that design the product and the clearinghouse, with appropriate consultation with their members and participants.[175] Furthermore, several commenters argued that under the SEC's proposed rule hedges could be significantly disrupted.[176]

In response to the commenters, the final rule adopted by the SEC allows either look-back or look forward opening prices to be used as alternate final settlement prices when an opening price is not readily available. Specifically, adopted SEC Rule 6h–1(b)(2) requires that, if an opening price for one or more securities underlying a security futures product is not readily available, the final settlement price of the security futures product shall fairly reflect (i) the price of the underlying security or securities during the most recent regular trading session for such security or securities, or (ii) the next available opening price of the underlying security or securities.

---

[166] *See* CME Letter.

[167] One commenter believed that the SEC and the CFTC should expand on the examples of the types of reasons why national securities exchanges and associations could impose additional trading halts provided in the footnotes of the Proposing Release to include order imbalances. *See* NYSE Letter. As noted above, the rule being adopted today is not designed to preclude a market trading security futures products from halting trading for other appropriate reasons. Therefore, a national securities exchange or national securities association would be free to impose additional restrictions on trading that are not required by this rule.

[168] *See* CBOE Letter, CBOT Letter, and NYSE Letter.

[169] 15 U.S.C. 78f(h)(3)(H).

[170] The liquidity constraints faced by the securities markets due to unwinding programs used in closing-price settlement procedures were discussed by the SEC staff in its report on the market decline on November 15, 1991. *See* SEC Division of Market Regulation, *Trading Analysis of November 15, 1991* (October 1992).

[171] *See* CBOT Letter.

[172] *See* CBOE Letter, CME Letter, and SIG Letter. *See also* OCC Letter (urging the Commissions to withdraw this aspect of the proposal, or at a minimum, modify it to allow the final settlement value to be based on the next opening).

[173] *See* CBOE Letter, CME Letter, and SIG Letter. *See also* FIA/SIA Steering Committee Letter (stating that the Commissions' proposed requirement is inconsistent with existing market practice and rules governing a broad range of listed stock index products) and OCC By-Laws, Article XII, Section 5 (allowing OCC to fix the final settlement price for security futures products using next opening prices of the underlying securities, as well as look-back pricing).

[174] *See* OCC Letter.

[175] *See* FIA/SIA Steering Committee Letter.

[176] *See* CBOE Letter, CME Letter, FIA/SIA Steering Committee Letter, OCC Letter, and SIG Letter.

As discussed earlier, the SEC agrees with the commenters' view that the proposed rule could have resulted in an unwanted and unwarranted de-linking of hedging positions if it mandated look-back pricing procedures for security futures products. The SEC believes that the adopted rule will provide national securities exchanges and national securities associations with some discretion to implement this general rule without dictating how the settlement price is derived for a security futures product. The SEC further notes that the final rule adopted today is consistent with OCC rules that allow for look-back pricing in certain circumstances.

In addition, one commenter indicated that problems could arise if an exchange or association that trades a security futures product and the registered clearing agency through which it clears such product had different rules for the determination of an alternate settlement price.[177] For example, a national securities exchange or national securities association wishing to use OCC clearing services for security futures must enter into a clearing agreement with OCC in which both parties agree that security futures will be cleared by OCC in accordance with OCC's by-laws and rules, which currently give OCC the final authority to determine final settlement prices in certain circumstances.[178] This commenter recommended that the clearing agency be permitted, under its rules, to determine the final settlement price of the security futures product.[179] In light of the comments, the final rule has been amended. Pursuant to adopted SEC Rule 6h–1(b)(3), if a clearing agency determines, pursuant to its rules, that such final settlement price is not consistent with the protection of investors and the public interest, taking into account such factors as fairness to buyers and sellers of the affected security futures product, the maintenance of a fair and orderly market in such security futures product, and consistency of interpretation and practice, the clearing agency has the authority to determine, under its rules, a final settlement price for such security futures product.

The SEC believes that in the absence of such a provision, confusion could arise if securities underlying a security futures product failed to trade on an expiration Friday and the market trading the security futures product and its clearing agency had different rules determining a final settlement price. Moreover, this provision should make security futures products that trade on different markets more fungible, because a single clearing agency will be able to harmonize procedures across different markets for determining alternate settlement prices.

In addition, adopted SEC Rule 6h–1(c)(1) and (c)(2) requires the trading on security futures products based on a single security to be halted at all times that a regulatory halt has been instituted for the underlying security or, if based on a narrow-based security index, to be halted at all times that a regulatory halt has been instituted for one or more underlying securities that constitute 50 percent or more of the market capitalization of the narrow-based security index. The SEC believes that the adopted rule should help preserve the investor protection and market integrity goals of regulatory halt procedures in the securities markets. The SEC believes that the close relationship between the underlying security or securities and the pricing of the overlying security futures product generally justifies a regulatory halt of the security futures product at all times that a regulatory halt has been instituted for the underlying security or securities.[180]

With respect to regulatory halts due to pending news, the SEC does not agree with two commenters who questioned the absolute requirement that trading in a security futures product must be halted during a news pending halt in the underlying security.[181] These commenters recommended providing exchanges with discretion to impose a trading halt when there is a news pending trading halt in the underlying security.[182] Specifically, one commenter believed that this discretion is necessary to allow trading in a security futures product when the underlying stock is halted in certain circumstances, such as when there is a need to adjust positions before an expiration.[183] Given the rarity of such situations and that the significant underpinning for imposing news pending regulatory halts is to promote investor protection and fair and orderly markets, the SEC believes that, to the extent that there is pending news that could impact an investor's decision and to the extent that single-stock futures are surrogates for the underlying security, there is a need for a provision requiring that trading in a security futures product be halted at all times that a regulatory halt has been instituted for the underlying security or securities, with certain limits for narrow-based security index futures. SEC Rule 6h–1(c)(1) and (2), which concern regulatory halts, will benefit current and potential shareholders by providing an opportunity for material information about the underlying security or securities to be disseminated to the public. Since pending news may have a significant effect on trading, the SEC believes that all investors should have an opportunity to learn of and react to material information in order to make informed investment judgments.[184] Accordingly, news pending regulatory halts should foster public confidence in the market and promote the integrity of the market place. Furthermore, the SEC believes that requiring an exchange or association to halt trading on a security futures product at all times that a regulatory halt has been instituted for the underlying security or securities should contribute to the maintenance of an efficient market.

In addition, the SEC believes that regulatory halts in the trading of security futures products due to the operation of circuit breakers should further protect investors and the markets by mitigating potential systemic stress during a historic market decline and allow for the reestablishment of an equilibrium between buying and selling interests in an orderly fashion. The SEC generally believes that pre-determined, coordinated, cross-market operations of circuit breakers would effectively address market declines that threaten to result in *ad hoc* and potentially destabilizing market closings.

The SEC does not agree with one commenter's recommendation that the SEC should provide exchanges with latitude in implementing coordinated circuit breaker procedures and flexibility in imposing this requirement on security futures products where the

[177] *See* OCC Letter.

[178] *See supra* note 60 and accompanying text.

[179] *See* OCC Letter; *see also* CBOE Letter (recommending that security futures products have the proviso that the clearing corporation rules have precedence for determining the index value at expiration during a trading halt in the underlying security); FIA/SIA Steering Committee Letter (urging the Commissions not to require exchanges and associations to adopt rules addressing the determination of fallback security futures final settlement prices when opening prices are not readily available).

[180] The trading halt provision of adopted SEC Rule 6h–1(c) would not be exclusive. The adopted rule is not designed to preclude a market trading security futures products from halting trading for other appropriate reasons, such as operational difficulties being experienced by the market or its automated systems or concerns over clearance and settlement operations.

[181] *See* CBOE Letter and FIA/SIA Steering Committee Letter.

[182] *Id.*

[183] *See* CBOE Letter.

[184] *See* Securities Exchange Act Release No. 32890 (September 14, 1993), 58 FR 48916 (September 20, 1993).

principal trading venues for the underlying securities (or for a subset of securities in the case of narrow-based indexes) are in foreign markets.[185] The SEC believes that it is important to require the application of cross-market circuit breaker regulatory halt procedures to security futures products and that such a requirement is necessary to satisfy the requirements of Section 6(h)(3)(K) of the Exchange Act.[186] If cross-market circuit breaker regulatory halt procedures were not applied to the security futures products, the lack of such procedures would undermine the use of trading halts in the underlying securities. Furthermore, national securities exchanges and national securities associations do have the flexibility under the rule to impose trading halt requirements where the underlying security is listed solely on a foreign market.

In addition, to be effective, circuit breakers have to be coordinated across stock, stock index futures, and options markets in order to prevent intermarket problems of the kind experienced in October 1987.[187] Since the markets currently coordinate regulatory halts between the listing market for the underlying security and other markets that trade the underlying security or any related security in order to promote investor protection and fair and orderly markets, SEC Rule 6h–1(c)(1) and (2) should help ensure such coordination and effectiveness through the use of regulatory halts in the markets trading security futures products.

Although the SEC understands the concern raised by one commenter regarding continued trading of a security futures product when the underlying security has halted trading if the listing market is not the primary market,[188] the SEC believes that, due to the contractual relationship between the issuer and the listing market, the listing market has a direct and ongoing relationship with the issuer and is, consequently, in the best position to be informed promptly by the issuer that pending news would require the imposition of a trading halt. The SEC also believes that designating the listing market as the venue for the purpose of applying the rule provides for ease of use and application and prevents national securities exchanges or national securities associations from having to determine the primary market for each underlying security. Further, the SEC believes that the listing market should represent sufficient liquidity that imposing a trading halt on a security futures product when the listing market for the underlying security imposes a trading halt furthers the purposes of Section 6(h)(3)(K) of the Exchange Act.[189]

With respect to narrow-based security indexes, the SEC believes that trading should be halted when a trading halt has been instituted for a sufficiently large portion of an index in order to prevent continued trading of the security futures product from becoming a means to improperly circumvent regulatory trading halts in the underlying securities. If trading in only one component security is halted, continued trading in a security future based on an index in which such a security represents a substantial portion of the index value could also undermine the trading halt in the underlying security. The SEC believes that trading halt procedures also would not be coordinated, as contemplated by Section 6(h)(3)(K) of the Exchange Act,[190] if the security futures product based on an index continued to trade while investors were precluded from trading some or all of the underlying securities. Moreover, the SEC believes that continued trading in the security futures product under these circumstances could undercut key provisions in the securities laws designed to protect investors and promote the fair and orderly operation of the markets.

Accordingly, the SEC believes that a general practice whereby trading is halted for the security futures product when investors lack access to current pricing information in the primary market for the underlying security should contribute to the maintenance of fair and orderly markets. Moreover, the SEC believes that this coordination of trading halts by SEC Rule 6h–1(c)(1) and (2) would generally benefit investors and the market by providing fewer opportunities for abuse and manipulation. SEC Rule 6h–1(c)(1) and (2) also would further increase investor confidence in the stability of the markets by assuring investors and the public that the national securities exchanges and national securities associations trading security futures product are reasonably equipped to handle market demand and pending material news.

Furthermore, in the final rule adopted by the SEC, the rule permits the SEC to grant an exemption with respect to any provision of SEC Rule 6h–1 based on its existing exemptive authority pursuant to Section 36 of the Exchange Act. Any exemption would require a finding that the action is necessary or appropriate in the public interest and consistent with the protection of investors. The SEC believes that the exemption provided for in SEC Rule 6h–1(d)[191] would benefit national securities exchanges and national securities associations by providing them with flexibility in responding to changing market conditions, as well as provide the SEC with continued oversight over the respondents by granting an exemption when it is necessary or appropriate in the public interest and is consistent with the protection of investors.

B.Costs of SEC Rule 6h–1 under the Exchange Act

The SEC estimates that there would be 17 respondents to the rule: 9 currently registered national securities exchanges, 1 national securities association (the NASD) that operates a securities market (Nasdaq), and an estimated 7 futures markets that are expected to register as Security Futures Product Exchanges.

National securities exchanges and national securities associations may file proposed rule changes pursuant to Section 19(b) of the Exchange Act [192] to implement SEC Rule 6h–1.[193] However, the SEC notes that even in the absence of SEC Rule 6h–1 each of the respondents would have to file one or more proposed rule changes to adopt listing standards for security futures products to trade security futures products pursuant to the Exchange Act, as amended by the CFMA.

Further, under Rule 17a–1 of the Exchange Act,[194] a national securities exchange or national securities association is required to retain records of the collection of information for at

[185] *See* CME Letter.

[186] 15 U.S.C. 78f(h)(3)(K).

[187] In response to the events of October 19, 1987, when the Dow Jones Industrial Average (''DJIA'') sustained a one-day decline of 508 points (22.6%), the nation's securities and futures markets in 1988 adopted rules that provide for coordinated, cross-market trading halts in all equity and equity-derivative markets following specified declines in the DJIA. *See* Circuit Breaker Report, *supra* note 68. *See also* Securities Exchange Act Release No. 38080 (December 23, 1996), 61 FR 69126 (December 31, 1996) (citing the SEC's desire to have coordinated mechanisms across these markets to deal with potential volatility that may develop during periods of extreme downward volatility).

[188] *See* CME Letter.

[189] 15 U.S.C. 78f(h)(3)(K).

[190] 15 U.S.C. 78f(h)(3)(K).

[191] The SEC may grant an exemption from the rule, either unconditionally or on specified terms and conditions, if it finds that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors. *See* Section 36 of the Exchange Act, 15 U.S.C. 78mm.

[192] 15 U.S.C. 78s(b).

[193] The SEC has adopted Rule 19b–7, which would direct Security Futures Product Exchanges to file proposed rule changes on Form 19b–7. *See* Securities Exchange Act Release No. 44692, *supra* note.

[194] 17 CFR 240.17a–1.

least 5 years, with the first 2 years in an easily accessible place. However, Rule 17a–1 requires a Security Futures Product Exchange to retain only those records relating to persons, accounts, agreements, contracts, and transactions involving security futures products.[195] The SEC believes that respondents would not incur any additional capital or start-up costs beyond the paperwork costs, nor any additional operational or maintenance costs, to comply with the collection of information requirements under SEC Rule 6h–1.[196] As discussed above, the paperwork burden for each respondent to comply with the new rule will be $1,280, resulting in a total cost for the 17 respondents of $21,760.

As mentioned earlier, adopted SEC Rule 6h–1(a) defines the terms ''opening price,'' ''regular trading session,'' and ''regulatory halt.'' The definitions of the relevant terms impose no costs on the respondents.

SEC Rule 6h–1 also requires respondents that choose to trade security futures products to develop a system for determining the settlement price of a cash-settled security futures product to fairly reflect the opening price of the underlying security. However, because respondents to the adopted rule currently have systems in place to determine opening prices, the SEC believes that respondents complying with the settlement provisions of SEC Rule 6h–1 would only incur minimal operational or maintenance costs to reconfigure their current settlement procedures to fairly reflect the opening price of the underlying security.

In addition, in order to comply with SEC Rule 6h–1(c)(1) and (2), the SEC believes that national securities exchanges and national securities associations may incur costs in developing or adapting existing systems to monitor when listing markets have instituted a regulatory halt for an underlying security of the security futures product. Similarly, costs may be incurred for system changes needed to calculate the market capitalization of an underlying narrow-based security index and when one or more of the underlying securities that constitute 50 percent or more of the market capitalization of a narrow-based security index are subject to a regulatory halt. The commenters did not provide the SEC with actual estimates of the costs they would incur to institute such a system. To the extent that systems need to be developed to determine the market capitalization of narrow-based security indexes to trigger a regulatory trading halt, the SEC does not believe that the additional costs that may be incurred will be substantial. Similarly, with respect to the costs in developing or adapting existing systems to monitor when listing markets institute regulatory halts for the security or securities, as applicable, underlying the security futures product, the SEC believes that these costs should not be substantial in light of the fact that the majority of affected markets already have systems in place to monitor regulatory halts. For instance, the SEC notes that 9 of the estimated 17 respondents are already required to provide notification of regulatory halts since they are participants of the Consolidated Tape Association Plan (''CTA Plan'')[197] and thus, should already have systems in place to monitor each other of regulatory halts being instituted. The SEC also believes that each of the remaining respondents will have to develop a similar system to monitor when regulatory halts have been instituted for the underlying security. However, any costs that will be incurred to establish such a system arise from the requirements of the Exchange Act, as amended by the CFMA, to coordinate trading halts.[198] The rule adopted today merely clarifies the requirement imposed by the Exchange Act, as amended by the CFMA.

One commenter believed that the requirement to halt trading in single-stock futures when trading in the underlying security is halted was overly broad to satisfy the requirement that procedures be put in place to coordinate trading halts.[199] This commenter believed that this was overly broad and burdensome in its application to retail investors for whom single-stock futures might serve as the only available means for managing risk and that the SEC should allow trading halt sessions during which investors with risk exposure to an underlying equity, which has been halted, might have the opportunity to enter into single-stock futures transactions with dealers.

In response, the SEC notes that the purpose of trading halts is to ensure that there is an adequate opportunity for information about a security to be disseminated to the public. The SEC does not believe that it would be consistent with the protection of investors to permit investors, including retail investors, to trade a surrogate for a security when trading is halted in that security. By adopting this rule, the SEC seeks to maintain and preserve the integrity of this mechanism so that the trading of security futures products will not be used as a tool to circumvent the institution of regulatory halts. Moreover, the SEC believes that the purpose of halting trading in the underlying security would be frustrated if market participants could circumvent this halt by trading during the halt in the related security futures product.[200]

Another commenter believed that the SEC's proposal to require a trading halt in a narrow-based security index future when a security or securities that constitute 30 percent or more of the market capitalization of the index are subject to a trading halt was too low a threshold to justify the disruption that it would inflict upon the futures market.[201] Another commenter recommended providing exchanges with greater discretion to decide whether to impose or maintain a trading halt.[202] This commenter also believed that because not all indexes underlying security futures products may be capitalization weighted, it may be difficult for exchanges to determine on a real-time basis when securities comprising 30 percent of the market capitalization of a price-weighted or equal dollar weighted index are halted. Similarly, one of the commenters expressed a concern that, with respect to corporate news events, it may be operationally difficult to determine on a real-time basis whether the threshold of market capitalization has been crossed.[203]

In response to the commenter's statement that the 30 percent market capitalization test was too low and after consideration of the potential effects of the proposed 30 percent trading halt threshold, the adopted rule requires trading to be halted in a narrow-based security index futures product when component securities representing 50 percent or more of the market capitalization of that narrow-based

[195] *See* 15 U.S.C. 78q(b)(4)(B).

[196] *See* Paperwork Reduction Act discussion at Section III.

[197] The CTA Plan is a joint industry plan that governs the consolidated transaction reporting system. Parties to the CTA Plan are as follows: the American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., Pacific Exchange, Inc., and Philadelphia Stock Exchange, Inc. *See* CTA Plan (Second Restatement), Section III (a).

[198] Section 6(h)(3)(K) of the Exchange Act, 15 U.S.C. 78f(h)(3)(K).

[199] *See* Students Letter.

[200] The SEC's rule does not preclude a market trading security futures products from halting trading for other appropriate reasons, such as operational difficulties being experienced by the market or its automated systems or concerns over clearance and settlement operations.

[201] *See* CBOT Letter.

[202] *See* CBOE Letter.

[203] *See* CME Letter.

security index are subject to a regulatory halt.[204] The SEC believes that one of the major economic benefits that market participants derive from the trading of futures on narrow-based security indexes is the ability to hedge positions containing the securities underlying the indexes, thereby reducing the risk of holding positions in those securities. For traders using a narrow-based security index future to hedge a position containing the component index securities, trading halts in certain of those component securities necessarily will introduce basis risk because the one-to-one relationship between the cash portfolio of securities and the narrow-based index future is disrupted.

The SEC believes that the proposed 30 percent threshold is too low because it could unnecessarily disrupt hedge positions involving futures on narrow-based security indexes that may still be substantially performing their intended risk-shifting function when trading is halted in a limited number of the index's component securities. The SEC believes that a 50 percent threshold would better serve the requirement's intended purpose. In adopting a 50 percent threshold, the SEC sought to balance the utility of maintaining effective hedge positions with concerns about circumventing the coordination requirement by allowing trading in narrow-based index futures to continue when trading in a limited number of the underlying securities is halted. The SEC believes that while it is not possible to eliminate completely the risk involved in hedging securities with a future on a narrow-based security index when trading halts are instituted for certain of those underlying securities, the 50 percent threshold reduces such risk. Therefore, the SEC is adopting a 50 percent threshold because it appears to appropriately balance the goals of hedging utility with prevention of improperly circumventing regulatory halts in the underlying securities. With respect to the commenters' concern regarding the potential difficulty in calculating the market capitalization of an index, especially for price-weighted or equal dollar weighted indexes, for purposes of instituting the regulatory halt, the SEC notes that selecting market capitalization as the method for calculating the weight of the index is similar to an existing standard used to calculate trigger points for circuit breaker operations.[205] Consequently, the SEC chose to apply a similar method in implementing regulatory halts to narrow-based security index futures product. Furthermore, in specifying market capitalization as the method for weighing an index, the rule provides clarity and uniformity for all respondents to utilize in implementing regulatory halts in security futures products based on narrow-based security indexes. If the rule allowed for different methods of weighing an index for purposes of imposing a regulatory halt in the trading of a security futures product, the SEC believes that the trading of security futures products may be more susceptible to becoming a means of circumventing regulatory halts in the underlying securities.

V. Consideration of the Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

SEC: Section 3(f) of the Exchange Act[206] requires the SEC, whenever it is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act[207] requires the SEC, when promulgating rules under the Exchange Act, to consider the impact any such rules would have on competition. Section 23(a)(2) further provides that the SEC may not adopt a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In the Proposing Release, the SEC requested comment on these issues.[208]

A. Effects on Competition

1. Settlement Procedures for Cash-Settled Security Futures Products

SEC Rule 6h–1 provides that the final settlement price for each cash-settled security futures product fairly reflect the opening price of the underlying security or securities. In the event that the opening price of an underlying security is not readily available, SEC Rule 6h–1 permits a national securities exchange or national securities association that lists and trades an overlying cash-settled security futures product to use look-back or next opening pricing procedures to derive a final settlement price for the security futures product. However, if a clearing agency determines, pursuant to its rules, that such final settlement price is not consistent with the protection of investors and the public interest, taking into account such factors as fairness to buyers and sellers of the affected security futures product, the maintenance of a fair and orderly market in such security futures product, and consistency of interpretation and practice, the clearing agency has the authority to determine, under its rules, a final settlement price for such security futures product.

The SEC does not believe that these provisions will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The rule adopted today codifies what is general industry practice for other cash-settled derivative products. Thus, even in the absence of the rule, it is likely that the markets would have opted for opening-price rather than closing-price procedures for security futures products. In addition, under the final rule, the market listing the security futures product may use look-back or next opening prices in instances where the opening price of an underlying security is not readily available. The SEC believes that this flexibility will assist national securities exchanges and national securities associations in responding to market conditions when creating security futures products. Finally, the provision that allows a clearing agency to determine a final settlement price in certain instances will remove an obstacle to the fungibility of security futures products, which may in time lead to the same security futures product being multiply traded on more than one national securities exchange or national securities association. The SEC believes that the trading of security futures products on multiple markets promote competition.

The Commissions received one comment on the proposed settlement procedures that briefly addressed competitive issues. This commenter stated that exchange-listed security futures products ''will be subject to intense competition'' and urged the Commissions to avoid rulemaking that would lead to the sub-optimal design of security futures products and thereby ''unfairly tilt the competitive landscape.''[209] In light of the revisions

[204] As with adopted SEC Rule 6h–1(c)(1), the trading halt provision of adopted SEC Rule 6h–1(c)(2) is not intended to be exclusive. The adopted rule is not designed to preclude a market trading security futures products based on narrow-based security indexes from halting trading at a threshold of less than 50 percent of the market capitalization of the index or for other appropriate reasons, such as operational difficulties being experienced by the market or its automated systems or concerns over clearance and settlement operations.

[205] *See, e.g.,* CME Rule 4002.I., *supra* note 74.

[206] 15 U.S.C. 78c(f).

[207] 15 U.S.C. 78w(a)(2).

[208] The CFTC is not required to consider its proposed rules under these standards.

[209] *See* CME Letter.

made to the rule at the suggestion of the various commenters, the SEC believes that the rule will further the anti-manipulation principles of Section 6(h)(3)(H) of the Exchange Act [210] while giving the markets flexibility to determine the characteristics of the products that they wish to trade. In addition, the SEC believes that the final rule promotes competition by providing national securities exchanges and national securities associations with the ability to structure their security futures products so as to respond to competitive forces in the marketplace.

2. Trading Halt Provisions

The Commissions received two comments that address the competitive aspects of the trading halt provisions of the proposed rule. One commenter stated that security futures product ''lookalikes'' can trade in the unregulated upstairs market and in foreign jurisdictions; to the extent that these other trading venues do not coordinate their trading halts, ''there is a potential competitive issue.'' [211] Likewise, the second commenter stated that sophisticated investors could create a synthetic future in a halted stock.[212]

The SEC does not believe that the trading halt provisions will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. These provisions do restrict competition, in the sense that they restrict the freedom and ability to trade a security futures product whenever trading is halted in the underlying security or securities. The SEC believes, however, that such a requirement is necessary and appropriate to further the purposes of the Exchange Act, which require that listing standards for security futures products must include procedures to coordinate trading halts between the market that trades the security futures product, any market that trades any underlying security, and other markets on which any related security is traded. Specifically, in the absence of these mandatory halts for the security futures product, the purpose of declaring the halt in the underlying security or securities would be frustrated, because the market for the overlying security futures product could serve as a proxy for the underlying market.

Further, the SEC believes that trading halts promote fair competition by providing an adequate opportunity for information about a security to be disseminated to the public. The SEC does not believe that it would be consistent with the protection of investors, particularly retail investors, to permit trading in a surrogate for a security when trading is halted in that security. Thus, the SEC believes it is essential, to ensure fair and orderly markets, to prevent a national securities exchange or national securities association from becoming a proxy market by trading an overlying security futures product when trading is halted in an underlying security. Furthermore, any potential restraint on competition caused by the rule's trading halt provisions must be weighed against the requirement that listing standards, pursuant to Section 6(h)(3)(K) of the Exchange Act,[213] include procedures to coordinate trading halts with the market that trades the underlying security.

3. Conclusion

The SEC finds that SEC Rule 6h–1 will promote competition and will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

B. Effects on Efficiency and Capital Formation

1. Settlement Procedures for Cash-Settled Security Futures Products

The SEC believes that the settlement provisions of SEC Rule 6h–1 will improve efficiency and capital formation. Although no commenters addressed the efficiency and capital formation aspects of the proposed rule directly, some of the commenters [214] noted that the proposed rule could have significant adverse monetary consequences and, by implication, impact efficiency and capital formation. Under the proposed rule, a security futures product would have been required to use look back prices in the event that the opening price of the underlying security or securities were not readily available. These commenters noted that situations could arise where, due to some disruption to the markets, a hedge consisting of a security futures product and another security was ''mismatched.'' This unhedged exposure could result in significant market losses. The final rule reduces the possibility of such losses—and, thus, improves efficiency and capital formation—by allowing security futures products to settle based on next opening prices if an opening price for one or more security futures products is not readily available and by allowing a registered clearing agency, in certain circumstances, to harmonize inconsistent settlement practices.

2. Trading Halt Provisions

The Commissions received no comments directly addressing efficiency and capital formation aspects of the trading halt provisions of SEC Rule 6h–1.

Regulatory trading halts provide an opportunity for investors to learn of, and react to, material information to make informed investment judgments. In addition, they mitigate potential systematic stress during severe market declines and allow for the reestablishment of an equilibrium between buying and selling interests in an orderly fashion. Accordingly, the SEC believes that the trading halt provisions of SEC Rule 6h–1, by requiring national securities exchanges and national securities associations to halt trading in security futures products when trading is halted in the underlying security or securities, will ultimately improve efficiency and capital formation by creating a more fair and orderly marketplace.

VI. Final Regulatory Flexibility Act

CFTC: The Regulatory Flexibility Act (''RFA'') requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities.[215] The rules adopted herein would affect designated contract markets, registered derivatives transaction execution facilities and derivatives clearing organizations. The CFTC has previously established certain definitions of ''small entities'' to be used in evaluating the impact of its rules on small entities in accordance with the RFA. In its previous determinations, the CFTC concluded that contract markets are not small entities for the purpose of the RFA.[216] The CFTC recently determined that registered derivatives transaction execution facilities and derivatives clearing organizations are not small entities for purposes of the RFA.[217] The CFTC invited the public to comment on the Chairman's certification that these rules would not have a significant economic impact on a substantial number of small entities.[218] The CFTC received no comments on the certification.

[210] 15 U.S.C. 78f(h)(3)(H).

[211] *See* CME Letter.

[212] *See* Students Letter.

[213] 15 U.S.C. 78f(h)(3)(K).

[214] *See supra* note 52.

[215] 5 U.S.C. 601 *et seq.*

[216] *See* 47 FR 18618, 18619 (April 30, 1982) (discussing contract markets).

[217] *See* 66 FR 14262, 14268 (March 9, 2001) (discussing registered derivatives transaction execution facilities); 66 FR 45604, 45609 (August 29, 2001) (discussing derivatives clearing organizations).

[218] *See* Proposing Release, 66 FR at 45918.

SEC: Pursuant to Section 605(b) of the Regulatory Flexibility Act,[219] the SEC certified that the adopted rule would not have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, was attached to the Proposing Release No. 34–44743 (August 24, 2001) as Appendix A. The SEC solicited comments concerning the impact on small entities and the Regulatory Flexibility Act certification, but received no comments.

VII. Statutory Basis and Text of Rule

List of Subjects

17 CFR Part 41

Security futures products, Trading halts and Settlement provisions.

17 CFR Part 240

Securities.

Commodity Futures Trading Commission

17 CFR Chapter I

The CFTC has the authority to adopt these rules pursuant to sections 2(a)(1)(D)(i)(VII), 2(a)(1)(D)(i)(X), and 8a(5) of the CEA, 7 U.S.C. 2(a)(1)(D)(i)(VII), 2(a)(1)(D)(i)(X), and 12(a)(5).

For the reasons set out in the joint preamble, Title 17, Chapter I of the Code of Federal Regulations is amended as follows.

PART 41—SECURITY FUTURES PRODUCTS

1. The authority citation for Part 41 is revised to read as follows:

Authority: Sections 206, 251 and 252, Pub. L. 106–554, 114 Stat. 2763; 7 U.S.C. 1a, 2, 6f, 6j, 7a–2, 12a; 15 U.S.C. 78(g)(2).

2. Section 41.1 is amended by adding paragraphs (j), (k) and (l) to read as follows:

§ 41.1 Definitions.

For purposes of this part:

* * * * *

(j) *Opening price* means the price at which a security opened for trading, or a price that fairly reflects the price at which a security opened for trading, during the regular trading session of the national securities exchange or national securities association that lists the security. If the security is not listed on a national securities exchange or a national securities association, then *opening price* shall mean the price at which a security opened for trading, or a price that fairly reflects the price at which a security opened for trading, on the primary market for the security.

(k) *Regular trading session* of a security means the normal hours for business of a national securities exchange or national securities association that lists the security.

(l) *Regulatory halt* means a delay, halt, or suspension in the trading of a security, that is instituted by the national securities exchange or national securities association that lists the security, as a result of:

(1) A determination that there are matters relating to the security or issuer that have not been adequately disclosed to the public, or that there are regulatory problems relating to the security which should be clarified before trading is permitted to continue; or

(2) The operation of circuit breaker procedures to halt or suspend trading in all equity securities trading on that national securities exchange or national securities association.

3. Section 41.25 is amended by adding the text of paragraph (a)(2) and adding paragraph (d) and by revising paragraph (b) to read as follows:

§ 41.25 Additional conditions for trading for security futures products.

(a) *Common provisions.* * * *

(2) *Regulatory trading halts.* The rules of a designated contract market or registered derivatives transaction execution facility that lists or trades one or more security futures products must include the following provisions:

(i) Trading of a security futures product based on a single security shall be halted at all times that a regulatory halt has been instituted for the underlying security; and

(ii) Trading of a security futures product based on a narrow-based security index shall be halted at all times that a regulatory halt has been instituted for one or more underlying securities that constitute 50 percent or more of the market capitalization of the narrow-based security index.

* * * * *

(b) *Final settlement prices for security futures products.*

(1) The final settlement price of a cash-settled security futures product must fairly reflect the opening price of the underlying security or securities;

(2) Notwithstanding paragraph (b)(1) of this section, if an opening price for one or more securities underlying a security futures product is not readily available, the final settlement price of the security futures product shall fairly reflect:

(i) The price of the underlying security or securities during the most recent regular trading session for such security or securities; or

(ii) The next available opening price of the underlying security or securities.

(3) Notwithstanding paragraphs (b)(1) or (b)(2) of this section, if a derivatives clearing organization registered under Section 5b of the Act or a clearing agency exempt from registration pursuant to Section 5b(a)(2) of the Act, to which the final settlement price of a security futures product is or would be reported determines, pursuant to its rules, that such final settlement price is not consistent with the protection of customers and the public interest, taking into account such factors as fairness to buyers and sellers of the affected security futures product, the maintenance of a fair and orderly market in such security futures product, and consistency of interpretation and practice, the clearing organization shall have the authority to determine, under its rules, a final settlement price for such security futures product.

* * * * *

(d) The Commission may exempt from the provisions of paragraphs (a)(2) and (b) of this section, either unconditionally or on specified terms and conditions, any designated contract market or registered derivatives transaction execution facility, if the Commission determines that such exemption is consistent with the public interest and the protection of customers. An exemption granted pursuant to this paragraph shall not operate as an exemption from any Securities and Exchange Commission rules. Any exemption that may be required from such rules must be obtained separately from the Securities and Exchange Commission.

Issued in Washington, DC on May 17, 2002 by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary.

Securities and Exchange Commission

17 CFR Chapter II

The SEC is adopting the rules pursuant to its authority under Exchange Act Sections 6, 9, 15A, 19, 23(a), and 36, 15 U.S.C. 78f, 78i, 78*o*–3, 78s, 78w(a), and 78mm.

For the reasons set out in the joint preamble, Title 17, Chapter II, part 240 of the Code of Federal Regulations is amended as follows.

[219] 5 U.S.C. 605(b).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.6h–1 is added to read as follows:

§ 240.6h–1 Settlement and regulatory halt requirements for security futures products.

(a) For the purposes of this section:

(1) *Opening price* means the price at which a security opened for trading, or a price that fairly reflects the price at which a security opened for trading, during the regular trading session of the national securities exchange or national securities association that lists the security. If the security is not listed on a national securities exchange or a national securities association, then *opening price* shall mean the price at which a security opened for trading, or a price that fairly reflects the price at which a security opened for trading, on the primary market for the security.

(2) *Regular trading session* of a security means the normal hours for business of a national securities exchange or national securities association that lists the security.

(3) *Regulatory halt* means a delay, halt, or suspension in the trading of a security, that is instituted by the national securities exchange or national securities association that lists the security, as a result of:

(i) A determination that there are matters relating to the security or issuer that have not been adequately disclosed to the public, or that there are regulatory problems relating to the security which should be clarified before trading is permitted to continue; or

(ii) The operation of circuit breaker procedures to halt or suspend trading in all equity securities trading on that national securities exchange or national securities association.

(b) *Final settlement prices for security futures products.*

(1) The final settlement price of a cash-settled security futures product must fairly reflect the opening price of the underlying security or securities.

(2) Notwithstanding paragraph (b)(1) of this section, if an opening price for one or more securities underlying a security futures product is not readily available, the final settlement price of the security futures product shall fairly reflect:

(i) The price of the underlying security or securities during the most recent regular trading session for such security or securities; or

(ii) The next available opening price of the underlying security or securities.

(3) Notwithstanding paragraph (b)(1) or (b)(2) of this section, if a clearing agency registered under Section 17A of the Act (15 U.S.C. 78q–1), or exempt from registration pursuant to Section 17A(b)(7) of the Act (15 U.S.C. 78q–1(b)(7)), to which the final settlement price of a security futures product is or would be reported determines, pursuant to its rules, that such final settlement price is not consistent with the protection of investors and the public interest, taking into account such factors as fairness to buyers and sellers of the affected security futures product, the maintenance of a fair and orderly market in such security futures product, and consistency of interpretation and practice, the clearing agency shall have the authority to determine, under its rules, a final settlement price for such security futures product.

(c) *Regulatory trading halts.* The rules of a national securities exchange or national securities association registered pursuant to Section 15A(a) of the Act (15 U.S.C. 78o–3(a)) that lists or trades one or more security futures products must include the following provisions:

(1) Trading of a security futures product based on a single security shall be halted at all times that a regulatory halt has been instituted for the underlying security; and

(2) Trading of a security futures product based on a narrow-based security index shall be halted at all times that a regulatory halt has been instituted for one or more underlying securities that constitute 50 percent or more of the market capitalization of the narrow-based security index.

(d) The Commission may exempt from the requirements of this section, either unconditionally or on specified terms and conditions, any national securities exchange or national securities association, if the Commission determines that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors. An exemption granted pursuant to this paragraph shall not operate as an exemption from any Commodity Futures Trading Commission rules. Any exemption that may be required from such rules must be obtained separately from the Commodity Futures Trading Commission.

By the Securities and Exchange Commission.

Dated: May 17, 2002.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A to the preamble will not appear in the Code of Federal Regulations.

Appendix A

Relevant Provisions of the Agreement Among

American Stock Exchange LLC, Boston Stock Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Incorporated, Cincinnati Stock Exchange, Incorporated, International Securities Exchange LLC, National Association of Securities Dealers, Inc., New York Stock Exchange, Inc., Pacific Exchange, Inc., Philadelphia Stock Exchange, Inc. (collectively, ''ISG/SROs'') as of [the date of Release].

* * * * *

Section 1. Intermarket Surveillance Group (''ISG'')

(a)(i) The Intermarket Surveillance Group (''ISG'') shall have as its purposes: (a) the coordination and development of programs and procedures designed to assist in identifying possible fraudulent and manipulative acts and practices across markets, particularly, between markets which trade the same or related securities and between markets which trade equity securities and options on an index in which such securities are included, (b) the routine exchange of Market Surveillance Reports, as that term is defined in Section 2(e), among ISG/SROs which is appropriate to the performance of adequate market surveillance, and (c) the exchange of information, upon request, among ISG/SROs which is appropriate to the requesting ISG/SRO in the discharge of its regulatory responsibilities under the Act to enforce compliance by its members and persons associated with its members with its rules. Each of the nine ISG/SROs will appoint form time to time one of its executive officers responsible for market surveillance to serve as its Principal Representative on the ISG. Each Principal Representative at any time appointed by an ISG/SRO shall serve as a member of ISG until such appointing ISG/SRO shall appoint a successor, such successor appointment to be evidenced by a written notice delivered by the appointing ISG/SRO to each of the other ISG/SROs.

(a)(ii) An ''ISG affiliate'' is a contract market or foreign self-regulatory organization which shall have such privileges and obligations as are set forth herein. A contract market or foreign self-regulatory organization shall become an ISG Affiliate if: (a) it is so approved by the unanimous vote of all ISG/SROs in attendance at a meeting of the ISG, and (b) the principal executive officer of the contract market or foreign self-regulatory organization so approved agrees in writing in a form approved by the ISG/SROs that the organization accepts the privileges and obligations of an ISG Affiliate. (Such a

writing is hereinafter referred to as an ''Affiliate Agreement.'')

An ISG Affiliate shall appoint an Affiliate Representative to the ISG who shall be one of the executive officers of the ISG Affiliate responsible for market surveillance. The Affiliate Representative shall select one member form the ISG Affiliate staff to serve as an alternate for, and under the direction of, the Affiliate Representative. The alternate shall be generally familiar with market surveillance techniques and procedures.

* * * * *

Section 2. Sharing of Information and Confidentiality

(a) Attached hereto as Exhibit A is an executed copy of the Agreement between SIAC (''Information Processor'') and the ISG Participants, including the Letter Agreement amending the Agreement (the ''Service Agreement''), providing for the development and operation of a Central Collection and Reporting System. As provided in the Service Agreement, each of the ISG/SROs will routinely receive Market Surveillance Reports relating to securities (as that term is defined in Section 3(a)(10) of the Act):

(i) Which are traded on such receiving ISG/SRO, and

(ii) That are derived from (e.g., options) or underlie (e.g., stocks) securities which are traded on such receiving ISG/SRO.

(b) From time to time, an ISG/SRO (''requesting SRO'') may ask another ISG/SRO (''requested SRO'') to provide it with information or documents: (i) relating to a security traded through the facilities of either ISG/SRO or (ii) relating to a member or a former member of either ISG/SRO (including, but not limited to information or documents concerning the identity, trading activity and positions of the requested ISG/SRO's members, former members or customers of the requested ISG/SRO's members or former members) for the purpose of enforcing compliance with the provisions of the Act, or for other regulatory purposes. Upon receipt of such a request, the requested ISG/SRO shall obtain such information from its own records or from its members and former members, and shall provide any information or documents so gathered to the requesting ISG/SRO. In addition, an ISG/SRO may ask another ISG/SRO to provide it with information or documents relating to an investigation or a disciplinary action by the requested ISG/SRO against any of its members, member organizations or persons associated with its members or member organizations. Upon receipt of such a request, the requested ISG/SRO shall obtain such information or documents concerning disciplinary actions from its own records and shall provide such information or documents to the requesting ISG/SRO.

(c) From time to time, an ISG/SRO may ask an ISG Affiliate to provide it with information or documents: (1) Relating to a security, an option on a security, a currency option, a futures contract, an option on a futures contract or any other derivative or underlying instrument traded through the facilities of the ISG Affiliate, or (2) relating to a member of an ISG/SRO or the ISG Affiliate (including, but not limited to, information or documents concerning the identity, trading activity and positions of the ISG Affiliate's members or customers of the ISG Affiliate's members). An ISG Affiliate shall agree in an Affiliate Agreement that, upon receipt of such a request, it shall use its best efforts in accordance with its rules to obtain such information from its own records or from its members, and, to the extent not inconsistent with its rules or with applicable law, provide any information or documents so gathered to the requesting ISG/SRO. In addition, an ISG/SRO may ask an ISG Affiliate to provide it with information or documents relating to the disposition of a disciplinary action taken by the ISG Affiliate against any of its members, member organizations or persons associated with its members or member organizations. An ISG Affiliate shall agree in an Affiliate Agreement that, upon receipt of such a request, it shall obtain such information or documents concerning disciplinary actions from its own records and, to the extend not inconsistent with its rules or with applicable law, provide such information or documents to the requesting ISG/SRO.

(d) From time to time, an ISG Affiliate may ask an ISG/SRO to provide it with information or documents: (1) Relating to a security, an option on a security, a currency option or any other derivative or underlying instrument traded through the facilities of the ISG/SRO, or (2) relating to a member of an ISG Affiliate or the ISG/SRO (including, but not limited to, information or documents concerning the identity, trading activity and positions of the ISG/SRO's members or customers of the ISG/SRO's members). Upon receipt of such a request, the ISG/SRO shall use its best efforts in accordance with its rules to obtain such information from its own records or from its members, and, to the extent not inconsistent with its rules or with applicable law, provide any information or documents so gathered to the requesting ISG Affiliate. In addition, an ISG Affiliate may ask ISG/SRO to provide it with information or documents relating to the disposition of a disciplinary action taken by the ISG/SRO against any of its members, member organizations or persons associated with its members or member organizations. Upon receipt of such a request, the ISG/SRO shall obtain such information or documents concerning disciplinary actions from its own records and, to the extent not inconsistent with its rules or with applicable law, provide such information or documents to the requesting ISG Affiliate.

(e) Market Surveillance Reports as used in this Agreement shall include:

(i) with respect to securities subject to last sale reporting pursuant to CTA, CQ, OPRA or NASDAQ Plans: quotations, last sale, clearing and other trading information available pursuant to, or collected under, such Plans; and post trade information generated pursuant to the ITS Plan.

(ii) reports routinely collected by an ISG/SRO relating to program trading, i.e., the purchase or sale of stocks that are part of a coordinated trading strategy, or relating to trades by its members and member organizations which are not reported to the Consolidated Tape.

(iii) reports relating to positions or exercises of securities.

* * * * *

[FR Doc. 02–12979 Filed 5–23–02; 8:45 am]

BILLING CODE 8010–01–P; 6391–01–P

Federal Register

Friday,
May 24, 2002

Part V

Environmental Protection Agency

40 CFR Part 80

Prohibition on Gasoline Containing Lead or Lead Additives for Highway Use: Fuel Inlet Restrictor Exemption for Motorcycles; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7215–3]

RIN 2060–AJ76

Prohibition on Gasoline Containing Lead or Lead Additives for Highway Use: Fuel Inlet Restrictor Exemption for Motorcycles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's rule exempts motorcycles with emission control devices that could be affected by the use of leaded gasoline from having to be equipped with gasoline tank filler inlet restrictors. As before, motorcycles and other motor vehicles without such emission control devices are not required to be equipped with gasoline tank filler inlet restrictors.

The Clean Air Act and corresponding EPA regulations prohibit gasoline containing lead or lead additives (leaded gasoline) as a motor vehicle fuel after December 31, 1995. As a deterrent to misfueling prior to that date, the EPA regulations required filler inlet restrictors on motor vehicles equipped with an emission control device that could be affected by the use of leaded gasoline, such as a catalytic converter. EPA retained that provision after 1995 because the filler inlet restrictor, besides being a deterrent to misfueling, has also been incorporated into the design of some vapor recovery gasoline nozzle spouts. Gasoline tank filler inlet restrictors do not work well with most motorcycle fuel tanks, especially the saddle type of tank, because of their shallow depth. A gasoline tank filler inlet restrictor may cause gasoline spitback or spillage when a motorcycle is refueled, which increases evaporative emissions. Today there is relatively little risk of misfueling a motorcycle. Also, it is unlikely that a gasoline tank filler inlet restrictor on a motorcycle helps to control gasoline vapors when the motorcycle is refueled.

DATES: This action will be effective June 24, 2002.

ADDRESSES: *Comments:* All comments and materials relevant to today's action have been placed in public docket A–2001–17 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M Street, SW., Washington, DC 20460 (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548 and by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Richard Babst at (202) 564–9473, facsimile: (202) 565–2085, e-mail address: *babst.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this rule are manufacturers of motorcycles. Regulated categories include:

Category	Examples of regulated entities
Industry	Manufacturers of motorcycles

To determine whether you are affected by this rule, you should carefully examine the requirements in § 80.24(b) of title 40 of the Code of Federal Regulations (''CFR''). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. History of Fuel Tank Filler Restrictor

Prior to 1996, 40 CFR 80.24(b) contained size specifications for the gasoline tank filler inlet of motor vehicles equipped with an emission control device that would be significantly impaired by the use of leaded gasoline. The purpose of the tank filler inlet restriction was to allow the insertion of an unleaded gasoline pump nozzle, but not a leaded gasoline pump nozzle. Specifically, § 80.24(b) required that a manufacturer of motor vehicles ''equipped with an emission control device which the Administrator has determined will be significantly impaired by the use of leaded gasoline'' shall ''[m]anufacture such vehicle with each gasoline tank filler inlet having a restriction which prevents the insertion of a nozzle with a spout as described in § 80.22(f)(1) and allows the insertion of a nozzle with a spout as described in § 80.22(f)(2).'' Section 80.22(f)(1) specified that ''[e]ach pump from which leaded gasoline is introduced into motor vehicles shall be equipped with a nozzle spout having a terminal end with an outside diameter of not less than 0.930 inch (2.363 centimeters).'' Section 80.22(f)(2) specified that ''[e]ach pump from which unleaded gasoline is introduced into motor vehicles shall be equipped with a nozzle spout which meets the following specifications: (i) The outside diameter of the terminal end shall not be greater than 0.840 inch (2.134 centimeters); (ii) * * *''

Section 80.24(b) contained additional specifications to prevent misfueling of motor vehicles with leaded gasoline. Section 80.24(b)(1) required that the filler inlet restrictor ''pool'' gasoline at the restrictor's opening, if fueling is attempted when the spout of a pump nozzle is not inserted into the restrictor opening. Historically, this had been accomplished by a spring-loaded door on the inside of the restrictor opening, which would be pushed open by inserting the spout of an unleaded gasoline nozzle. Since leaded gasoline nozzle spouts were larger than the inlet restrictor opening, they did not fit into the restrictor opening or push open the spring loaded door. Fueling with leaded gasoline would require the nozzle spout to be positioned in front of the restrictor opening and spring-loaded door. If fueling were attempted in this manner, the gasoline would pool at the restrictor opening and cause the nozzle's automatic shut-off device to activate. The related § 80.24(b)(2) exempted motorcycle manufacturers from meeting the ''pooling'' requirements of § 80.24(b)(1).

Section 211(n) of the Clean Air Act, 42 U.S.C. 7545(n), prohibits the introduction of gasoline containing lead or lead additives into commerce for use as a motor vehicle fuel after December 31, 1995. For consistency with this Clean Air Act prohibition, we published in the **Federal Register** on February 2, 1996 a direct final rule and associated notice of proposed rulemaking revising our regulations (61 FR 3832 and 61 FR 3894, respectively). The direct final rule became effective on March 4, 1996 except for language associated with § 80.24(b). We withdrew language for that paragraph from the direct final rule on March 4, 1996 (61 FR 8221) due to adverse comment, and subsequently published revised language in the **Federal Register** on June 6, 1996 (61 FR 28763).

In the February 2, 1996 direct final rule and associated notice of proposed rulemaking, we removed various portions of § 80.24, including the introductory text, and modified § 80.24(b) to make the size requirements of the tank filler inlet applicable to all new motor vehicles, and not just to those equipped with an emission control device that would be significantly impaired by the use of leaded gasoline. We reasoned that retaining the requirement for the tank filler inlet restrictor would conform with the statutory ban prohibiting the use of gasoline containing lead or lead

additives as a motor vehicle fuel. The restrictor requirements for motor vehicles would match the nozzle size requirement for dispensing unleaded gasoline, which we had retained in § 80.22(f)(2). Further, General Motors and several gasoline pump nozzle manufacturers had requested that the specification for the tank filler inlet size be retained so that automobile equipment would continue to be compatible with Stage II vapor recovery pump nozzles. We simplified the applicability language of § 80.24(b) to refer to all motor vehicles, instead of motor vehicles equipped with an emission control device that would be significantly impaired by the use of leaded gasoline, because we thought that all motor vehicles were manufactured with tank filler inlet restrictors at that time. We did not intend to broaden the applicability of § 80.24(b).

In the February 2, 1996 direct final rule and associated notice of proposed rulemaking, we also removed §§ 80.24(b)(1) and 80.24(b)(2). We believed misfueling would be unlikely, making the § 80.24(b)(1) ''pooling'' safeguard against misfueling unnecessary. Once we removed § 80.24(b)(1), it was appropriate for us to remove § 80.24(b)(2) as well, since § 80.24(b)(2) exempted motorcycle manufacturers from the requirements of 80.24(b)(1).

We received an adverse comment from Harley Davidson, Inc. (Harley) on the revised language of 40 CFR 80.24(b) in the February 2, 1996 direct final rule and proposed rule.[1] In its comment, Harley stated that motorcycles generally do not use emission control devices that would be significantly impaired by the use of leaded gasoline (e.g., catalytic converters) and are therefore not manufactured with tank filler inlet restrictors matching the requirements of the existing § 80.24(b). The February 2, 1996 direct final rule and associated notice of proposed rulemaking would have required these motorcycles to meet the fuel inlet size requirements of 40 CFR 80.24(b), thereby causing additional economic burden and manufacturing complexity for Harley. We did not intend or foresee that we would be expanding the applicability of § 80.24(b) by the revised applicability language. Because of this adverse comment, we withdrew paragraph 40 CFR 80.24(b) from the direct final rule, and published it in the June 6, 1996 final rule with its previous applicability.

On October 31, 2001, we published a Direct Final Rule (66 FR 54955) and concurrent Notice of Proposed Rule (66 FR 54965) to 40 CFR 80.24(b) to exempt motorcycles equipped with an emission control device that will be affected by the use of leaded gasoline, such as a catalytic converter, from having to be equipped with a fuel tank inlet restrictor. We received an adverse comment, and on December 27, 2001 withdrew the Direct Final Rule (66 FR 66867) in order to address the comment in today's action based on the concurrent Notice of Proposed Rule. The December 27, 2001 withdrawal of the direct final rule was inadvertently published in the Proposed Rule section of the **Federal Register**. The Office of the Federal Register is publishing elsewhere in this issue of the **Federal Register** a correction reclassifying the withdrawal as a Rule.

II. Why Are We Exempting Motorcycles?

There are few, if any, offsetting environmental benefits to support the continued use of gasoline tank filler inlet restrictors in motorcycles equipped with emission control devices that would be significantly impaired by the use of leaded gasoline. Today there is relatively little risk of misfueling a motorcycle. Gasoline tank filler inlet restrictors were originally required to prevent motor vehicles with an emission control device, such as a catalytic converter, from using leaded gasoline. Leaded gasoline can damage catalytic converters and certain other emission control devices. Significantly, leaded gasoline has now been banned from use in all motor vehicles for over six years and is generally no longer available for sale at gasoline filling stations. Also, it is unlikely that a gasoline tank filler inlet restrictor on a motorcycle helps to control gasoline vapors when the motorcycle is refueled. Although a vapor recovery gasoline nozzle, in conjunction with the gasoline tank filler inlet restrictor, helps to control gasoline vapors and emissions when used to refuel most motor vehicles, they are relatively ineffective when used to refuel motorcycles.

During refueling of a car or truck, the fuel nozzle spout is inserted into the fill tube and through the filler neck restrictor plate. The fuel nozzle automatically stops the flow of gasoline when it senses a sufficiently high level of gasoline vapors below the restrictor plate, which indicates the fuel tank is full. We understand that, beginning with the introduction of Stage I vapor recovery fueling systems in the early 1990s and continuing with current Stage II vapor recovery systems, the fuel tank inlet restrictor of a car or truck has been used as a guide, a seat and a pressure contact point for some vapor recovery gasoline nozzle spouts.

For some vapor recovery fueling systems, the restrictor plate lines up the nozzle and helps concentrate the fugitive emissions for collection. Without the restrictor plate, more fugitive emissions would be released. The ''balance'' type of vapor recovery system uses a boot to seal around the outside of the tank filler inlet tube. While this system does not require the restrictor plate to help capture fugitive emissions, it requires the restrictor plate to push against in order to activate an interlock. An ''emission'' or ''efficiency'' control vapor recovery device does not need the restrictor plate to control fugitive emissions. This device consists of a cup, which has an outside diameter the same as the inside diameter of the fill hole, that is clipped to the spout. A similar type of vapor recovery system, the Marconi system, does not need the restrictor plate or the plastic cup.[2]

Most on-board vapor recovery systems, which are required for light-duty vehicles and light-duty trucks but not for motorcycles, are also designed around the restrictor plate. A seal is needed between the pump nozzle and the tank filler inlet tube to prevent fugitive emissions from escaping. This seal is normally located below the restrictor plate, and uses the restrictor plate to line-up the nozzle with the seal. Fugitive emissions below the seal are then diverted to a canister in the vehicle.[3]

We understand that gasoline tank filler inlet restrictors do not work well with most motorcycle fuel tanks, especially the saddle type of tank, because of their shallow depth. The use of gasoline tank inlet restrictors in motorcycles may in fact contribute to unnecessary releases of gasoline vapors and emissions. Unlike a car or truck, motorcycles are typically fueled while the operator observes the tank fuel level, similar to filling a small gasoline container typically used to refuel lawnmowers and other small gasoline powered equipment. However, the restrictor plate obstructs the view of the fuel level, and could contribute to inadvertent fuel overfill and spillage. If fueling with the ''balance'' type of vapor recovery nozzle, motorcycle operators generally pull back and hold the rubber boot to activate the interlock and allow

[1] This comment can be found in docket no. A–95–13 for the February 2, 1996 direct final rule and proposed rule, and for the June 6, 1996 final rule.

[2] Conversation with Catlow on April 3, 2001.

[3] IBID.

for better visibility, but that defeats the vapor recovery system.[4] Further, the filler inlet restrictor may cause the nozzle spout to be inserted deeper into the motorcycle tank than otherwise would be necessary, potentially causing increased splash back from the shallow tank. Besides causing excess gasoline vapors and spitback through the restrictor plate openings, this splashback could cause the pump nozzle to prematurely stop the flow of gasoline. The operator may have to reactivate the pump nozzle, possible several times, before the tank is full.

These problems were not much of an issue in the 1995 and earlier time frame, because only relatively few motorcycles were equipped with catalytic converters, and thus, only relatively few required tank inlet restrictors. However, a significant number of 2001 model year motorcycles have been equipped with catalytic converters.

III. Response to Comment

An adverse comment was submitted jointly from representatives of the multifamily rental industry: National Apartment Association, National Leased Housing Association, and National Multi Housing Council (herein referred to collectively as ''NAA''). NAA expressed concern about environmental exposure to lead caused by potential increased usage of leaded gasoline, and raised four issues, which we will address separately.

Issue 1: NAA objects to EPA's proposed decision that would have the practical effect of making it easier for motorcycles to use leaded fuel, increase their usage of leaded gasoline and consequently increase lead emissions into the environment.

Fuel inlet restrictors together with pooling specifications were required to prevent damage to emission control devices, such as catalytic converters, installed on many motor vehicles to reduce smog. Today's action does not allow a motorcycle to use leaded gasoline, nor does it make it more likely that a motorcycle will misfuel with leaded gasoline. The fact that there is no suggestion or evidence that the large number of motorcycles in the U.S. not equipped with a fuel inlet restrictor are being misfueled supports this conclusion.

Fuel inlet restrictors have never prevented the use of leaded gasoline in motorcycles. Fuel inlet restrictors with size and ''pooling'' specifications were required from the mid-1970s until 1996 for motor vehicles with emission control devices, such a catalytic converters, that could be damaged by the use of leaded gasoline. At that time, both leaded and unleaded gasoline were generally available at gasoline filling stations.[5] The size and ''pooling'' specifications were intended to prevent the fueling of those vehicles with leaded gasoline. Significantly, motorcycles have always been exempt from the ''pooling'' specification.

The size specification prevented leaded gasoline nozzles, which had a larger diameter than unleaded gasoline nozzles, from being inserted into the fuel inlet restrictor opening. The ''pooling'' specification was typically met by a spring loaded door covering the fuel inlet opening, which could be pushed open with an unleaded gasoline nozzle for normal fueling. But, if fueling were attempted with a leaded gasoline nozzle, the spring loaded door would remain closed and gasoline would pool in the filler tube above the restrictor. The pooled gasoline would activate the gas pump's automatic cut-off device or overflow onto the vehicle and ground. Not only were motorcycles exempt from the ''pooling'' specification, but also very few motorcycles were required to be equipped with the filler neck restrictor because most did not have catalytic converters.

The specifications of the fuel inlet restrictor were changed in 1996 because leaded gasoline was no longer permitted as a fuel for any motor vehicle and we no longer considered fueling with leaded gasoline to be a significant possibility.[6] We retained the specification for the ''shell'' of the restrictor so that vapor recovery refueling nozzles and fuel inlets on the motor vehicles would remain compatible. However, we eliminated the critical ''pooling'' specification. A filler inlet restrictor meeting today's specification allows fueling with large diameter gasoline nozzles, such as the former leaded gasoline nozzles, although it would be a minor inconvenience. Refueling is possible by holding the nozzle over the restrictor opening and letting the gasoline pour through the opening. This process might take somewhat longer because the fueling rate may need to be slowed to prevent splashing of the fuel off of the restrictor surface. Since motorcycles were already exempt from the ''pooling'' specification prior to 1996, the 1996 regulatory change had no practical effect on motorcycles.

Even if a motorcycle owner wanted to use leaded fuel, it is relatively hard to find today. It is no longer generally available at retail gasoline stations because the use of leaded fuel is banned in motor vehicles. We estimate that only 0.3 percent of the gasoline used in the United States today is leaded gasoline.[7] It is used primarily in some aircraft engines and some race cars.[8] Although non-highway engines can use leaded gasoline, most do not. The non-highway engines that can use both leaded or unleaded gasoline use only unleaded gasoline, and the other non-highway engines that were designed to use leaded gasoline (other than certain racing or aircraft engines), such as some old farm equipment, currently use unleaded gasoline mixed with a commercially available lead substitute additive.[9]

[4] Also, for those motorcycles where the filler cap is attached to the gas tank by a hinge, the rubber boot of a ''balance'' type of vapor recovery nozzle would not seat correctly anyway, and the insertion pressure required to compress the boot may damage the gas cap, hinge, and tank finish.

[5] While both leaded and unleaded gasoline were available at gasoline filling stations since the mid-1970s, the availability of leaded gasoline gradually diminished and became small by the early 1990s. This was likely due to the increasing dominance of highway vehicles requiring unleaded gasoline, the increasing cost of producing and distributing the smaller volume of leaded gasoline, and our lead phase-down program of the 1980s.

[6] 61 FR 3832, February 2, 1996 (Direct Final Rule); 61 FR 389461, February 2, 1996 (Notice of Proposed Rule); 61 FR 8221, March 4, 1996 (partial withdrawal of the Direct Final Rule of February 2, 1996); 61 FR 28763, June 6, 1996 (Final Rule to complete February 2, 1996 rulemaking).

[7] Based on the National Transportation Statistics 2000, Table 4–7, BTS01–01, Bureau of Transportation Statistics, for 1998, the aviation component of non-highway gasoline was 351 million gallons, which is 10.7 percent of the total 3,284 million gallons non-highway gasoline. The racing component is considered negligible according to a conversation with the American Petroleum Institute, and a racing component was not broken out into a separate category in the BTS table. The BTS table also does not break marine engines into a separate category. Our contacts in the fuel industry doubt that leaded gasoline is used by marine engines, and we have no evidence of such use. If we assume 351 million gallons is the aviation and racing component combined (the racing component being negligible), and that aviation and racing are the only applications using leaded gasoline, than leaded gasoline represents only 0.3 percent of the total 128 billion gallons of highway and non-highway gasoline combined.

[8] According to the Department of Energy, jet fuel, which is a kerosene derivative of petroleum, comprises 98.8 percent of aviation energy (BTU) demand in the United States. Aviation gasoline, which is consumed by aircraft equipped with reciprocating engines and which may contain lead, comprises the remaining 1.2 percent of aviation energy demand. (see Internet at http://www.eia.doe.gov/oiaf/aeo/supplement/sup_tran.pdf, Table 54) Also, not all race cars use gasoline—some use nitromethane or methanol.

[9] Some non-highway applications need to use leaded gasoline or its equivalent. Non-highway engines built prior to the mid-1970s were designed to run on leaded gasoline. The use of unleaded gasoline in many of those old engines could cause valve seat recession. However, the equivalent of leaded gasoline can be obtained from unleaded gasoline by mixing it with a commercially available lead substitute additive, such as Millers VSP, Red

One reason why the non-highway market (other than certain aviation and racing engines) has switched to unleaded gasoline and, thereby, made leaded gas harder to find is the cost of maintaining separate fuel distribution systems for highway and non-highway applications. Maintaining an additional tank and fuel pump for a small volume of leaded gasoline at a retail gasoline station is generally not cost effective. This is particularly true if the local non-highway consumer market can use unleaded highway gasoline instead. Also leaded gasoline must be segregated in dedicated storage and shipping tanks and must use dedicated transfer lines to prevent lead contamination of the unleaded highway gasoline supply.

Another reason why the non-highway market (other than certain aviation and racing engines) has switched to unleaded gasoline is that leaded gasoline causes corrosive lead compound deposits in the engines and lubricating oil. Consequently, using leaded gasoline requires more frequent oil changes and reduces engine and exhaust system life. Even those engines designed to run on leaded gasoline can use unleaded highway gasoline and reap the benefits of unleaded gasoline if it is mixed with a commercially available lead substitute additive. Thus all non-road engines (except for certain racing and aircraft engines) can use unleaded highway gasoline, although some may need to also use a lead substitute additive.

A motorcycle owner, therefore, that wanted to use leaded gasoline would either have to go to an airport, a race track or a racing supply center. Even if such an owner obtained leaded gasoline at one of these locations, the fuel would be specially formulated as aviation gasoline or racing gasoline that may not be suitable for use in a highway motorcycle.

Finally, even if a motorcycle owner could find a leaded gasoline, it is unlikely that he or she would want to pay more for leaded gasoline than for cheaper unleaded gasoline that is conveniently available at retail gasoline stations. In January 2002, for example, the price of aviation fuel at an airport in the Washington D.C. area was $2.65 per gallon.[10] By comparison, the price of unleaded gasoline at retail gasoline stations in the same community during that same time period was less than $1.10. Racing gasolines are even more expensive than aviation fuels. In January 2002, racing gasolines in the Washington D.C. area cost an average of about $3 to $5 per gallon depending on the blend (especially depending on the desired octane), and could be as high as $7 per gallon.[11]

Issue 2: NAA claims that EPA's proposal is inconsistent with findings of the President's Task Force on Environmental Health Risks and Safety to Children, report titled ''Eliminating Childhood Lead Poisoning: a Federal Strategy Targeting Lead Paint hazards. NAA also claims the proposal is inconsistent with EPA's regulatory mandate under other statutes to limit exposure to lead. Although leaded gasoline has been prohibited for use in motor vehicles since 1995, NAA indicates that leaded gasoline remains available for military, construction and agricultural use.

Eliminating the fuel inlet requirement for motorcycles equipped with catalytic converters is not inconsistent with longstanding efforts to reduce lead in the environment. As discussed above, fuel inlet restrictors together with pooling specifications were required to prevent damage to emission control devices, such as catalytic converters, installed on many motor vehicles to reduce smog. Today's action does not allow a motorcycle to use leaded gasoline, nor does it make it more likely that a motorcycle will misfuel with leaded gasoline.

Issue 3: NAA asked for copies of the risk assessments and the cost benefit analysis conducted by EPA in support of the proposed rule.

EPA does not believe that today's action will result in an increased risk of greater lead emissions into the environment. EPA, therefore, did not conduct a risk assessment or a cost benefit-analysis for today's rule. Based on the facts discussed above and in the direct final rule, EPA has concluded that fuel inlet restrictors are not needed in motorcycles with emission control devices and that the absence of a fuel inlet restrictor does not make it more likely that a motorcycle will be misfueled with leaded gasoline. The fact that there is no suggestion or evidence that the large number of motorcycles in the U.S. not equipped with a fuel inlet restrictor are being misfueled supports this conclusion.

Issue 4: NAA suggested that the proposed rule go through a formal rulemaking process in order to allow for public notice and comment period.

Today's action is an ''informal'' or notice-and-comment rulemaking. We published a notice of proposed rulemaking on October 31, 2001 soliciting public comment on the proposed rule. We also published a companion direct final rule which would have gone into effect on December 31, 2001 had we not received any adverse comment on the proposed rule. Upon receiving adverse comment to the proposed rule we withdrew the direct final rule. Today's action responds the adverse comment and promulgates the Agency's final rule.

Formal rulemaking under sections 556 and 557 of the Administrative Procedure Act is a trial-type procedure before an agency that is used very infrequently. The Clean Air Act does not require formal or ''on-the-record'' rulemaking for today's action.

IV. Final EPA Action

Today's final rule revises 40 CFR 80.24(b) to exempt motorcycles equipped with an emission control device that will be affected by the use of leaded gasoline, such as a catalytic converter, from having to be equipped with a fuel tank inlet restrictor.

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Line Lead Substitute, Superblend 12/Zero Lead 2000, and Valvemaster.

[10] From conversation with aviation firm at Frederick Airport in Frederick Maryland on January 7, 2002.

[11] From conversation with racing firm in Gaithersburg, Maryland on January 7, 2002.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore is not subject to these requirements.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule exempts motorcycles from a current provision that requires them, under certain circumstances, to be equipped with fuel inlet restrictors, and thus avoids the costs imposed by the existing Federal regulations. Today's rule, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As discussed above, the rule is a deregulatory action and affects only motorcycle manufacturers.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, Apr. 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. EPA reduced the content of lead in leaded gasoline, because EPA found that lead particle emissions from motor vehicles presented a significant risk of harm to the health of urban populations, especially children (38 FR 33734, Dec. 6, 1973). Congress ultimately banned the use of leaded gasoline in motor vehicles after 1995. 42 U.S.C. 7545(n). Gasoline tank filler inlet restrictors were related to the phase-out of leaded gasoline to prevent a motor vehicle with an emission control device, such as a catalytic converter, from using leaded gasoline. Leaded gasoline can damage such emission control devices. Today there is relatively little risk of misfueling a motorcycle with an emission control device that could be damaged by the use of leaded gasoline, because leaded gasoline has now been banned from use in all motor vehicles for over five years and is generally no longer available for sale at gasoline filling stations.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. Today's rule eliminates the existing requirement that manufacturers of motorcycles must equip certain motorcycles with fuel tank filler inlet restrictors. Thus, Executive Order 13132 does not apply to this rule.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Congressional Review

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U. S. Senate, the U. S. House of Representatives, and

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A ''major rule'' cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(a).

H. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities affected by this rule.

Today's rule is a deregulatory action and affects all motorcycle manufacturers. It eliminates the existing requirement that manufacturers of motorcycles must equip certain motorcycles with fuel tank filler inlet restrictors. We have therefore concluded that today's rule will relieve regulatory burden for any small entity.

I. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The rule affects the applicability of the fuel tank filler inlet restrictor to motorcycles. It therefore affects only manufacturers of motorcycles Thus, Executive Order 13175 does not apply to this rule.

J. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

K. Electronic Copies of Rulemaking

A copy of this action is available on the Internet at *http://www.epa.gov/otaq* under the title: ''Final Rule—Prohibition on Gasoline Containing Lead or Lead Additives for Highway Use: Fuel Inlet Restrictor Exemption For Motorcycles.''

L. Statutory Authority

Authority for this action is in sections 211, and 301(a) of the Clean Air Act, 42 U.S.C. 7545, 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 16, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATIONS OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545 and 7601(a).

2. Section 80.24 is amended by adding paragraph (c) to read as follows:

§ 80.24 Controls applicable to motor vehicle manufacturers.

* * * * *

(c) A motorcycle, as defined at 40 CFR 86.402 for the applicable model year, is exempt from the requirements of paragraph (b) of this section.

[FR Doc. 02–12846 Filed 5–23–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday,
May 24, 2002

Part VI

Department of Education

Office of Special Education and Rehabilitative Services; Special Education—Training and Information for Parents of Children with Disabilities; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.328M]

Office of Special Education and Rehabilitative Services; Special Education—Training and Information for Parents of Children with Disabilities

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for FY 2002 competitions under one program authorized by the Individuals with Disabilities Education Act (IDEA), as amended: Special Education—Training and Information for Parents of Children with Disabilities (one priority).

Waiver of Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the rulemaking procedures in the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priority in this notice.

General Requirements

(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) Part III of each application submitted under this notice, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than the number of pages listed in the table at the end of this notice, using the following standards:

• A ''page'' is 8.5'' × 11'' (on one side only) with one-inch margins (top, bottom, and sides).

• Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I—the cover sheet; Part II—the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject without consideration or evaluation any application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

Instructions for Transmittal of Applications

Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Special Education—Training and Information for Parents of Children with Disabilities program—CFDA 84.328M is one of the programs included in the pilot project. If you are an applicant under the Special Education—Training and Information for Parents of Children with Disabilities program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

• Your participation is voluntary.

• You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.

• You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.

2. Make sure that the institution's Authorizing Representative signs this form.

3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

4. Place the PR/Award number in the upper right hand corner of ED 424.

5. Fax ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Special Education—Training and Information for Parents of Children with Disabilities program at: *http://e-grants.ed.gov*. We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

Special Education—Training and Information for Parents of Children with Disabilities (CFDA No. 84.328M)

Purpose of Program: The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

Under section 682(e) of IDEA, the Assistant Secretary is required to: (a) Make at least one award to a parent organization in each State, unless the Assistant Secretary does not receive an application from such an organization in each State of sufficient quality to warrant approval; and (b) select among applications submitted by parent organizations in a State in a manner that ensures the most effective assistance to

parents, including parents in urban and rural areas, in the State.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99; and (b) The selection criteria for this priority drawn from the EDGAR general selection criteria menu (34 CFR 75.210). The specific selection criteria for this priority are included in the funding application packet for this competition.

Eligible Applicants: Parent organizations, as defined in section 682(g) of IDEA. A parent organization is a private nonprofit organization (other than an institution of higher education) that:

(a) Has a board of directors, the parent and professional members of which are broadly representative of the population to be served and the majority of whom are parents of children with disabilities, that includes individuals with disabilities and individuals working in the fields of special education, related services, and early intervention; or

(b) Has a membership that represents the interests of individuals with disabilities and has established a special governing board meeting the requirements for a board of directors in paragraph (a) under *Eligible Applicants* and has a memorandum of understanding between this special governing board and the board of directors of the organization that clearly outlines the relationship between the board and the committee and the decisionmaking responsibilities and authority of each.

In addition, to demonstrate eligibility to receive a grant, an applicant must describe how its board or special governing committee meets the criteria for a parent organization in section 682(g) of IDEA. Any parent organization that establishes a special governing committee under section 682(g)(2) of IDEA must demonstrate that the bylaws of its organization allow the governing committee to be responsible for operating the project (consistent with existing fiscal policies of its organization).

Priority

Under sections 661(e) and 682 of IDEA and 34 CFR 75.105(c)(3), we give an absolute preference to applications that meet the following priority. We will fund under this competition only those applications that meet this priority: *Absolute Priority—Parent Training and Information Centers* (84.328M)

Background

The IDEA Amendments of 1997 strengthen the role of parents and increase their involvement in decisions about their children's education. In order to allocate resources more equitably, create a unified system of service delivery, and provide the broadest coverage for the parents and families in every State, the Assistant Secretary is making awards in five-year cycles for each State. In FY 2002, applications for 5-year awards will be accepted for Arkansas, California, Connecticut, Georgia, Illinois, Kansas, Michigan, Montana, New Jersey, New Mexico, Ohio, Oregon, South Carolina, Texas, and Utah. Exceptions to the 5-year awards will be in the States of Nebraska and New York where applications will be accepted for 4-year awards. Awards may also be made to authorized entities in Guam, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States.

Priority

A Parent Training and Information Center must—

(a) Provide training and information that meets the training and information needs of parents of children with disabilities in the area served by the Center, particularly underserved parents and parents of children who may be inappropriately identified, including those who are not identified at all;

(b) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under IDEA, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in IDEA;

(c) Serve the parents of infants, toddlers, and children with the full range of disabilities;

(d) Assist parents to—

(1) Better understand the nature of their children's disabilities and their educational and developmental needs;

(2) Communicate effectively with personnel responsible for providing special education, early intervention, and related services;

(3) Participate in decisionmaking processes and the development of individualized education programs and individualized family service plans;

(4) Obtain appropriate information about the range of options, programs, services, and resources available to assist children with disabilities and their families;

(5) Understand the provisions of IDEA for the education of, and the provision of early intervention services to, children with disabilities; and

(6) Participate in school reform activities;

(e) Contract with the State educational agency, if the State elects to contract with the Parent Training and Information Center, for the purpose of meeting with parents who choose not to use the mediation process to encourage the use, and explain the benefits, of mediation consistent with section 615(e)(2)(B) and (D) of IDEA;

(f) Establish cooperative relations with the Community Parent Resource Center or Centers in their State in accordance with section 683(b)(3) of IDEA;

(g) Network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 685(d) of IDEA, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities;

(h) Annually report to the Assistant Secretary on—

(1) The number of parents to whom the Parent Training and Information Center provided information and training in the most recently concluded fiscal year, and

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities; and

(i) If there is more than one parent center in a particular State, coordinate its activities with the other center or centers to ensure the most effective assistance to parents in that State.

An applicant must identify the strategies it will undertake—

(a) To ensure that the needs for training and information for underserved parents of children with disabilities in the areas to be served are effectively met, particularly in underserved areas of the State; and

(b) To work with the community-based organizations, particularly in the underserved areas of the State.

A Parent Training and Information Center that receives assistance under this absolute priority may also conduct the following activities—

(a) Provide information to teachers and other professionals who provide special education and related services to children with disabilities;

(b) Assist students with disabilities to understand their rights and responsibilities on reaching the age of majority, as stated in section 615(m) of IDEA; and

(c) Assist parents of children with disabilities to be informed participants

in the development and implementation of the State improvement plan under IDEA.

In addition to the annual Project Directors' meeting included in the ''General Requirements'' section of this notice, a project's budget must include funds to attend a regional Project Directors' meeting to be held each year of the project.

Current funding levels and population of school age children were factors in determining the funding levels for these grants. Regions were identified in California, Illinois, Michigan, Ohio, and Texas by using the educational services breakdowns operational within each State.

Project Period: With the exception of projects in the States of Nebraska and New York, projects will be funded for a period up to 60 months. Projects in the States of Nebraska and New York will be funded for a period up to 48 months.

Estimated Project Awards: Project award amounts are for a single budget period of 12 months. To ensure maximum coverage for this competition, the Assistant Secretary has adopted regional designations established by California, Illinois, Michigan, Ohio, and Texas and has identified corresponding maximum award amounts. Any applicant that applies for grants for more than one region must complete a separate application for each region.

In the following States, one award may be made in the following amounts to a qualified applicant for a parent center to serve the *entire* State:

—Arkansas $265,225
—Connecticut $283,050
—Georgia $481,750
—Kansas $299,475
—Montana $233,775
—New Jersey $465,750
—New Mexico $285,125
—Oregon $290,775
—South Carolina $295,560
—Utah $253,170
—Nebraska $230,625
—New York $234,075

(These figures represent the maximum amounts the Assistant Secretary will award. In addition, the Assistant Secretary has not specified maximum amounts for Guam, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States).

In the following States with the exception of Illinois, one award will be made in the following amounts to a qualified applicant for a parent center to serve each identified Region. In Illinois Region 1, the Assistant Secretary will make up to two awards. The total of these two awards will not exceed the maximum amount listed in the chart below. A list of the counties that are included in each Region also follows.

California

—Region 1 $649,300
—Region 2 $532,300
—Region 3 $181,235
—Region 4 $473,785
—Region 5 $181,235

Illinois

—Region 1 $562,690
—Region 2 $289,570

Michigan

—Region 1 $249,265
—Region 2 $414,265

Ohio

—Region 1 $226,190
—Region 2 $438,115

Texas

—Region 1 $432,085
—Region 2 $432,085
—Region 3 $244,085

Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

Listing of States/Regions/Counties

California Regions

Region 1 includes the following counties: Los Angeles, Ventura, Santa Barbara, San Luis Obispo.

Region 2 includes the following counties: Mono, Inyo, San Bernadino, Orange, Riverside, San Diego, Imperial.

Region 3 includes the following counties: Madera, Stanislaus, Mercer, Mariposa, San Benito, Monterey, Fresno, Kings, Tulare, Kern.

Region 4 includes the following counties: Sonoma, Napa, Yolo, Solano, Marin, Contra Costa, San Joaquin, Alameda, San Mateo, Santa Clara, Santa Cruz, San Francisco.

Region 5 includes the following counties: Del Norte, Humboldt, Mendocino, Sisklyou, Trinity, Shasta, Modoc, Lassen, Tehama, Lake, Glenn, Colusa, Butte, Sutter, Yuba, Sacramento, Nevada, Plumas, Sierra, Placer, El Dorado, Amador, Calavaras, Alpine, Tuolumne.

Illinois Regions

Region 1 includes the following counties: Cook, DuPage, Grundy, Kane, Kendall, Lake, McHenry, Will.

Region 2 includes the remainder of the State

Ohio Regions

Region 1 includes the following counties: Darke, Preble, Butler, Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Jackson, Pike, Ross, Fayette, Greene, Clark, Champaign, Logan, Shelby, Miami, Montgomery, Warren, Clinton, Highland.

Region 2 includes the remainder of the State.

Michigan Regions

Region 1 includes the following counties: Oakland, Macomb, Wayne.

Region 2 includes the remainder of the State.

Texas Regions:

Region 1 includes the following counties: Hardeman, Foard, Knox, Wilbarger, Baylor, Throckmorton, Wichita, Archer, Young, Clay, Jack, Montague, Cooke, Wise, Palo Pinto, Eralh, Parker, Hood, Somerveil, Denton, Tarrant, Johnson, Grayson, Collin, Dallas, Ellis, Fannin, Hunt, Rockwall, Kaufman, Lamar, Delta, Hopkins, Red River, Franklin, Titus, Camp, Morris, Bowie, Casa, Cass, Marion, Bosque, Hamilton, Mills, Lampaas, Coryell, Hill, McLennan, Bell, Navarro, Freestone, Limestone, Falls, Burnet, Llano, Gillespie, Kendall, Comal, Blanco, Williamson, Travis, Hays, Lee, Bastrop, Caldwell, Guadalupa, Fayette, Gonzales, Leon, Robertson, Millam, Burleston, Washington, Austin, Brazoa, Madison, Grimes, Houston, Trinity, Walker, Montgomery, Polk, San Jacinto, Tyler, Hardin, Jefferson, Orange, Jasper, Newton, Raine, Van Zandt, Henderson, Anderson, Wood, Smith, Cherokee, Upshur, Gregg, Rusk, Nacogdoches, Angelina, Harrison, Panola, Shelby, San Augustine, Sabine.

Region 2 includes the following counties: Kerr, Real, Kinney, Maverik, Uvalde, Zavala, Dimmit, Bandera, Medina, Frio, La Salle, Boxer, Atascosa, Wilson, Webb, Zapata, Jim Hogg, Staarr, Hidalgo, Willsoy, Cameron, McMullen, Duval, Live Oak, Jim Wells, Brooke, Nueces, Kisberg, Kenedy, San Patricio, Aransas, Bee, Karnes, Gollad, Dewitt, Lavaca, Colorado, Wharton, Malagorda, Jackson, Victoria, Refugio, Calhoun, Waller, Fort Bond, Brezoria, Harris, Galveston, Liberty, Chambers.

Region 3 includes the following counties: El Paso, Hudspeth, Culberson, Jeff Davis, Presidio, Reeves, Brewster, Pecos, Terrell, Dallam, Hartley, Oldham, Deaf Smith, Parmer, Bailey, Cochran, Yoakum, Gaines, Andrews, Loving, Winkler, Ward, Sharman, Moore, Potter, Randall, Castro, Swisher, Lamb, Hockley, Terry, Ector, Crane, Upton, Reagan, Midland, Glasscook, Dawson, Martin, Borden, Howard, Hansford, Hutchinson, Carson, Armstrong, Briscoe, Ochiltree, Roberts, Gray, Donley, Hall, Lipscomb, Hemphill, Wheeler, Collingsworth, Childress,

Hale, Lubbock, Lynn, Floyd, Crosby, Garza, Motley, Dickens, Kent, Cottle, King, Scurry, Mitchell, Stonewall, Fisher, Nolan, Haskall, Jones, Taylor, Shackelford, Callahan, Stephens, Eastland, Sterling, Irion, Crockett, Val Verde, Coke, Tom Green, Schlelcher, Sutton, Edwards, Runnels, Concho, Menard, Kimble, Coleman, McCulloch, Mason, Brown, San Sabe.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the ''General Requirements'' section of this notice.

For Applications Contact: Education Publications Center (ED Pubs), PO Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED-Pubs (1–877–433–7827). FAX: 301–470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free) 1–877–576–7734.

You may also contact Ed Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*

Or you may contact Ed Pubs at its e-mail address: *edpubs@inet.ed.gov*

If you request an application from Ed Pubs, be sure to identify this competition as follows: CFDA No. 84.328M.

FOR FURTHER INFORMATION CONTACT: Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may also obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team under **FOR FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the internet at the following site: *www.ed.gov/legislation/FedRegister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo/nara/index.html*

Program Authority: 20 U.S.C. 1482.

Dated: May 20, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT—APPLICATION NOTICE FOR FISCAL YEAR 2002

CFDA number and name: 84.328M—special education—training and information for parents of children with disabilities	Applications available	Application deadline date	Deadline for Intergovernmental review	Maximum award (per year)*	Estimated range of awards	Estimated average size of awards	Estimated number of awards	Project period	Page limit**
Parent Training and Information Centers.	05/24/02	07/08/02	09/06/02		$100,000	$273,355	27	Up to 60 mos.	50
Arkansas				$265,225	$585,000				
Connecticut				$283,050					
Georgia				$481,750					
Kansas				$299,475					
Montana				$233,775					
New Jersey				$465,750					
New Mexico				$285,125					
Oregon				$290,775					
South Carolina				$295,560					
Utah				.....	$253,170				
Nebraska				$230,625				Up to 48 mos.	
New York				$234,075				Up to 48 mos.	
California:				.....				Up to 60 mos.	
Region 1				$649,300					
Region 2				$532,300					
Region 3				$181,235					
Region 4				$473,785					
Region 5				$181,235					
Illinois:								Up to 60 mos.	
Region 1				$562,690					
Region 2				$289,570					
Michigan:								Up to 60 mos.	
Region 1				$249,265					
Region 2				$414,265					

INDIVIDUALS WITH DISABILITIES EDUCATION ACT—APPLICATION NOTICE FOR FISCAL YEAR 2002—Continued

CFDA number and name: 84.328M—special education—training and information for parents of children with disabilities	Applications available	Application deadline date	Deadline for Intergovernmental review	Maximum award (per year)*	Estimated range of awards	Estimated average size of awards	Estimated number of awards	Project period	Page limit**
Ohio:				.....				Up to 60 mos.	
Region 1				$226,190					
Region 2				$438,115					
Texas:				.....				Up to 60 mos.	
Region 1				$432,085					
Region 2				$432,085					
Region 3				$244,085					

*Consistent with EDGAR 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year. Awards may also be made to authorized entities in Guam, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States. However, the Assistant Secretary has not specified maximum funding levels for these entities. ** Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted in the table in this notice. Please refer to the ''Page Limit'' requirements included in the priority description and the page limit standards described in the ''General Requirements'' section. We will reject and will not consider an application that does not adhere to this requirement.

NOTE:The Department of Education is not bound by any estimates in this notice.

[FR Doc. 02–13159 Filed 5–23–02; 8:45 am]

BILLING CODE 4000–01–P

Reader Aids

Federal Register

Vol. 67, No. 101

Friday, May 24, 2002

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids — **202–523–5227**

Laws — **523–5227**

Presidential Documents

Executive orders and proclamations — **523–5227**

The United States Government Manual — **523–5227**

Other Services

Electronic and on-line services (voice) — **523–3447**

Privacy Act Compilation — **523–3187**

Public Laws Update Service (numbers, dates, etc.) — **523–6641**

TTY for the deaf-and-hard-of-hearing — **523–5229**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.nara.gov/fedreg**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://hydra.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, MAY

21559–21974 1
21975–22336 2
22337–30306 3
30307–30532 6
30533–30768 7
30769–31104 8
31105–31710 9
31711–31934 10
31935–32816 13
34383–34584 14
34585–34816 15
34817–34990 16
34991–35424 17
35425–35704 20
35705–35890 21
35891–36078 22
36079–36494 23
36495–36778 24

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

5437 (See Proc. 7553) 30535
Proc. 6693 (Superseded by Proc. 7562) 35707
6962 (See Proc. 7554) 30537
7350 (See Proc. 7561) 35705
7400 (See Proc. 7561) 35705
7547 21559
7548 30307
7549 30309
7550 30311
7551 30313
7552 30533
7553 30535
7554 30537
7555 31105
7556 31107
7557 34583
7558 34585
7559 34587
7560 34815
7561 35705
7562 35707
7563 35890
7564 35893
7565 36495
7566 36497
7567 36499

Executive orders:

12958 (See Order of May 6, 2002) 31109
13263 22337

Administrative orders:

Notices:
Notice of May 16, 2002 35423
Presidential Determinations:
No. 2002–17 of April 24, 2002 31711
No. 2002–18 of April 27, 2002 31713
May 6, 2002 31109

5 CFR

591 22339
Ch. VII 30769
2608 35709
2634 22348

Proposed Rules

1605 35051
1620 35051
1651 35051
1655 35051

7 CFR

28 36501
29 36079
301 ..... 21561, 30769, 31935, 34589, 34817
915 31715
989 34383
993 31717
Ch. XIII 30769

Proposed Rules:

318 ..... 34626, 35932
929 21854
930 31896
1427 31151
1710 36542
1717 36542

8 CFR

Proposed Rules:

3 31157
103 ..... 34862, 36676
214 ..... 34862, 36676
236 31157
240 31157
241 31157
286 34414

9 CFR

94 ..... 31935, 34590

Proposed Rules:

53 21934
71 31987
93 31987
94 ..... 31987, 35936
98 31987
112 34630
113 34630
130 31987

10 CFR

15 30315
72 31938
430 ..... 21566, 36368

Proposed Rules:

71 36118

11 CFR

Proposed Rules:

100 35654
102 35654
104 35654
106 35654
108 35654
110 ..... 31164, 35654
114 35654
300 35654
9034 35654

12 CFR

3 35991
7 35992
203 30771
208 35991
225 35991

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 24, 2002

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Tobacco inspection:

Mandatory grading; producer referenda; published 5-23-02

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Missouri; published 3-25-02

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Asien, etc.; published 5-24-02

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare and Medicaid:

Peer review organizations; name and other changes; technical amendments; published 5-24-02

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Lincomycin; published 5-24-02

HEALTH AND HUMAN SERVICES DEPARTMENT

Medicare and Medicaid:

Peer review organizations; name and other changes; technical amendments; published 5-24-02

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Oklahoma; published 5-24-02

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Organization and operations—

Chartering and field of membership manual; update; published 4-24-02

SOCIAL SECURITY ADMINISTRATION

Social security benefits:

Federal old-age, survivors, and disability insurance—

Disability determinations; medical criteria; technical revisions; published 4-24-02

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness standards:

Transport category airplanes—

Braking systems; harmonization with European standards; published 4-24-02

TREASURY DEPARTMENT

Fiscal Service

Practice and procedure:

Checks drawn on United States Treasury; indorsement and payment; published 5-24-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Apples; grade standards; comments due by 5-28-02; published 3-26-02 [FR 02-07221]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands groundfish and Gulf of Alaska groundfish; Steller sea lion protection measures; amendment and correction; comments due by 5-31-02; published 5-1-02 [FR 02-10693]

Northeastern United States fisheries—

Northeast multispecies; comments due by 5-29-02; published 4-29-02 [FR 02-10488]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

West Coast States and Western Pacific Fisheries—

Pacific Fishery Management Council; environmental impact statement; comments due by 5-31-02; published 4-16-02 [FR 02-09203]

Marine mammals:

Commercial fishing authorizations—

Atlantic Lage Whale Take Reduction Plan; comments due by 5-28-02; published 3-27-02 [FR 02-07129]

Incidental taking—

Cook Inlet, AK; beluga whales; subsistence harvest by Alaska natives; limitation; comments due by 5-28-02; published 5-7-02 [FR 02-11302]

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps grant regulations; comments due by 5-28-02; published 3-26-02 [FR 02-06604]

DEFENSE DEPARTMENT

Health care services; collections from third party payers of reasonable charges; comments due by 5-28-02; published 3-29-02 [FR 02-07539]

ENVIRONMENTAL PROTECTION AGENCY

Air program:

Stratospheric ozone protection—

Methyl bromide; allowances to produce for developing countries; comments due by 5-29-02; published 4-29-02 [FR 02-10417]

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Stratospheric ozone protection—

Methyl bromide; allowances to produce for developing countries; comments due by 5-29-02; published 4-29-02 [FR 02-10416]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 5-28-02; published 4-25-02 [FR 02-10171]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 5-31-02; published 4-1-02 [FR 02-07633]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 5-31-02; published 4-1-02 [FR 02-07634]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

South Carolina; comments due by 5-28-02; published 4-26-02 [FR 02-10334]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

South Carolina; comments due by 5-28-02; published 4-26-02 [FR 02-10335]

Utah; comments due by 5-31-02; published 5-1-02 [FR 02-10727]

Air quality planning purposes; designation of areas:

Nevada; comments due by 5-30-02; published 4-30-02 [FR 02-10628]

FEDERAL COMMUNICATIONS COMMISSION

Radio and television broadcasting:

Broadcast and cable EEO rules and policies; revision; comments due by 5-29-02; published 5-8-02 [FR 02-11388]

FEDERAL ELECTION COMMISSION

Compliance procedures:

Administrative fines; civil money penalties reduction for those who file reports late or not at all; comments due by 5-28-02; published 4-25-02 [FR 02-10106]

Prohibited and excessive contributions; non-Federal funds or soft money; comments due by 5-29-02; published 5-20-02 [FR 02-12177]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

S. 378/P.L. 107–182
To redesignate the Federal building located at 3348 South Kedzie Avenue, in Chicago, Illinois, as the ''Paul Simon Chicago Job Corps Center''. (May 21, 2002; 116 Stat. 584)
Last List May 22, 2002

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://hydra.gsa.gov/archives/publaws-l.html* or send E-mail to **listserv@listserv.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L Your Name.

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.